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Supreme Court of the United States

OCTOBER TERM, 1965

No. ~~42~~ 29

Z. T. OSBORN, JR., PETITIONER,

vs.

UNITED STATES.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

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PETITION FOR CERTIORARI FILED NOVEMBER 5, 1965

CERTIORARI GRANTED JANUARY 31, 1966



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IN THE  
**United States Court of Appeals**  
FOR THE SIXTH CIRCUIT

**UNITED STATES OF AMERICA**  
Plaintiff-Appellee

Vs.

No. 16,056

**Z. T. OSBORN, JR.,**  
Defendant-Appellant

---

**Appellant's Appendix on Appeal**

---

**JACK NORMAN, SR.**  
Attorney for Appellant  
213 Third Avenue, North  
Nashville 3, Tennessee

**IN THE  
UNITED STATES COURT OF APPEALS FOR THE  
SIXTH CIRCUIT**

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Original Print

**Proceedings in the United States Court of Appeals  
for the Sixth Circuit**

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# CLERK'S DOCKET ENTRIES

## CRIMINAL DOCKET UNITED STATES DISTRICT COURT

D. C. Form No. 100 Rev.

### Title of Cases

**THE UNITED STATES**

**vs.**

**Z. T. OSBORN, JR.**

**330 Stahlman Building, Nashville, Tennessee**

### THREE (3) COUNTS

**VIOLATION: Section 1503, Title 18 U.S.C. (Did endeavor to obstruct and impede due administration of justice—did request and instruct individual to contact prospective jurors with offer to pay said prospective jurors monies to vote for acquittal of defendant in this Court.)**

### Attorneys

**For U. S.:**

**KENNETH HARWELL & Staff  
RUFUS McLEAN  
U. S. Department of Justice  
Washington, D.C.**

**For Defendant:**

**JACK NORMAN, SR.  
213 Third Avenue, No.  
Nashville 3, Tennessee**

Statistical Record	Costs	Date	Name or Receipt No.	Rec.
J.S. 2 mailed	Clerk	6/22/64	# 47, 626	\$5.00
J.S. 3 mailed	Marshal	1/26/64		
Violation	Docket fee			

**Title  
Sec.**

Date	Proceedings
12/6/63	Indictment filed.
12/6/63	Praeipe for Warrant to arrest defendant, filed.
12/7/63	Warrant issued, same to U.S. Marshal for execution.
12/10/63	ORDER entered, signed by both Judges, that both judges of this court have jointly rendered

*Docket Entries*

**Date                      Proceedings**

judgment in a collateral matter on the basis of the same acts alleged in the first count of the indictment in this case (Matter of Osborn, General Docket, November 20, 1962) and both recuse themselves from presiding in any further proceeding under this indictment. Copies to attorneys and to Mr. Osborn.

2/10/64      ORDER entered that this case be assigned to Judge Marion S. Boyd for conducting and holding all further proceedings. (Judge Boyd having been designated to hold court for this district Feb. 7, 1964 thru December 1, 1964. Copies to attorneys of record, transmittal letter.

2/21/64      MOTION to Suppress Evidence Illegally Obtained filed by Defendant; Certificate of Service and Memorandum in support, attached.

2/21/64      MOTION to Dismiss Indictment Because Grand Jury was Improperly and Illegally Impanelled; Certificate of Service, and Exhibits A thru G, attached.

2/21/64      Exhibit 'H' filed. (Numerous News Paper pages).

2/26/64      Order entered granting attorney for the United States fifteen days within which to file answers to the motions filed by the defendant. Further Ordering that the motions be set for hearing at 9:00 A.M., April 15, 1964 in U. S. District Courtroom No. 1, Nashville, Tennessee. (Copy mailed to Mr. McLean).

3/11/64      REPLY in Opposition to Defendant's Motion



*Docket Entries*

<b>Date</b>	<b>Proceedings</b>
	to Suppress Evidence Illegally Obtained, filed by the Government. Certificate of Service on.
3/11/64	REPLY in Opposition to Defendant's Motion to Dismiss the Indictment because the Grand Jury was Improperly and Illegally Impanelled, filed by the Plaintiff. Certificate of Service on.
3/25/64	MOTION for Inspection and Copying Documents Under Rule 16, and in Advance of Trial Under Rule 17(c) FRCP. filed. Certificate of Service on.
3/25/64	Memorandum of defendant, in support of MOTION for Production, Inspection and Copying, filed. Certificate of service (letter filed).
4/1/64	Memorandum, in opposition to motion for production, inspection and copying, filed by the Government. Certificate of Service attached.
4/7/64	REPLY to Government's Response Respecting Illegality of Grand Jury, filed by defendant; Certificate of Service & affidavit attached.
4/13/64	Subpoenas issued to: Robt. D. Vick; John Polk; David McMackin; Robt. P. Seigler; Mr. Dymple Simpson; Permenas Cox; F. A. Goodman; C. R. Byrn; W. C. Ashworth; Raymond Kea; A. D. Baynton; J. Gill Thompson; Mr. Williams; Mrs. Ruby Thompson; J. B. Marshall; Ben S. Kimbrough; Thomas L. Smith; Morris F. Dozier; Bess L. Adkisson; J. B. Bradley; A. C. Earls; Leroy Cook; M. B. Carr; Oneida Lyons, all to testify on behalf of deft. 15 April, 1964—two copies to U. S. Marshal together with checks for fees (Osborn).

*Docket Entries*

Date	Proceedings
4/16/64	Above listed subpoenas returned executed— with exception of three: Barmenas Cox; J. Gil Thompson & J. B. Bradley returned unexecuted. The checks which accompanied said subpoenas were returned, transmittal letter.
4/15/64	Hearing on various MOTIONS: Court finds:— on motion to dismiss, that the Grand Jury was legally drawn, that no showing was made of any prejudice on part of said Grand Jury against defendant, or any other person, and in all respects defendant failed to sustain his burden of proof—ac- cording said motion to Dismiss is denied. With respect to Motion to Inspect and Copy Documents — the Government voluntarily agreed to furnish same for inspection and copy- ing, on the condition that said Records remain in custody of officials of the U. S. at all times. Determination of the MOTION to Sup- press Evidence illegally obtained was de- ferred for determination at the trial of the general issue, with consent of counsel for the parties—with the understanding that the defendant waives no objection to the admission of the evidence referred to in said motion. Following disposition of motions, defendant waived formal arraignment; waived reading of the indictment and entered P.N.G. After consultations ORDER entered that the trial of this case be set for May 20, 1964 to be tried. Attested copies to U. S. Attorney and one to Jas. Neal, Special Assistant, in Washington, D. C.—transmittal letter.

*Docket Entries*

<b>Date</b>	<b>Proceedings</b>
5/25/64	Jury impaneled. Third count dismissed upon motion of the U. S. Attorney. After hearing part of the proof, jury respited into custody of the U. S. Marshal until 5-26-64: Defendant's Motion to suppress denied.
5/26/64	Jury respited until May 27, 1964.
5/27/64	Jury respited until May 28, 1964.
5/28/64	Motion for Judgment of Acquittal filed by defendant.
5/28/64	Defendant's Motion for Judgment of Acquittal denied at conclusion of Government's proof. Jury respited until May 29, 1964.
5/29/64	Defendant's Requested Jury Instructions 1 through 44 filed.
5/29/64	Defendant's motion for judgment of acquittal at conclusion of all proof denied. Jury verdict of guilty under the first count, and Not Guilty under the Second count. Defendant allowed 10 days within which to file motion for New Trial, and J. R. reserved under the last count pending hearing on motion for New Trial. Motion for New Trial set for hearing on June 19, 1964 at 10:00 A.M.
5/29/64	Jury Verdict filed.
6/8/64	Motion for a New Trial, filed by defendant; certificate of service on page 5. Attached (following said Certificate of Service) is MEMORANDUM in SUPPORT of the motion for New Trial.
6/19/64	Order entered denying defendant's motion for New Trial.



*Docket Entries*

<b>Date</b>	<b>Proceedings</b>
6/19/64	Judgment and Commitment: Three and one-half (3½) years, and pay a fine in the amount of \$5,000.00 with remain. Execution of sentence suspended pending termination of appeal upon the defendant executing an appearance bond in the amount of \$2,500.00, and upon executing a \$5,000.00 Bond for payment of fine.
6/19/64	Appearance bond in the amount of \$2500.00 filed.
6/19/64	Bond in the amount of \$5000.00 for payment of fine and stay of execution filed.
6/22/64	Notice of Appeal, filed.
6/24/64	Commitment issued to U. S. Marshal.
6/30/64	O.C.R.'s transcript filed; Proceedings relative to Motion for New Trial and Sentence.
6/30/64	O.C.R.'s transcript filed; Trial before Judge Marion S. Boyd on May 25 thru 29, 1964—Volume I; II & III (Part 1-693 pages). O.C.R.'s transcript filed: Volume IV thru VII (Part II—pages 694 thru 1275). O.C.R.'s transcript filed; Proceedings of April 15, 1964 before the Hon. Judge Marion S. Boyd (sitting by designation).

## INDICTMENT

UNITED STATES DISTRICT COURT  
For the Middle District of Tennessee  
Nashville Division

UNITED STATES OF AMERICA

vs.

Z. T. OSBORN, JR.

No. 13484

15 U.S.C., S 1503

Filed Dec. 6, 1963

Andrew H. Mizell, Clerk

By Guy W. Cooper

## INDICTMENT

### Count One

The Grand Jury charges:

That during the period from on or about November 6, 1963, up to and including November 15, 1963, in the Middle District of Tennessee, Nashville Division, Z. T. Osborn, Jr., the defendant herein, did unlawfully, knowingly, wilfully and corruptly endeavor to influence, obstruct and impede the due administration of justice in the United States District Court for said District and Division in the trial of *United States of America v. James R. Hoffa, et al.*, (Criminal No. 13,383) in that the said Z. T. Osborn, Jr., did request, counsel and direct Robert D. Vick to contact Ralph A. Elliott, who was, and was known by the said Osborn to be, a member of the petit jury panel from which the petit jury to hear the said trial was scheduled to be drawn, and to offer and promise to pay the said Ralph A. Elliott \$10,000 to induce the said Elliott to vote for an acquittal, if the said Elliott should be selected to sit on the petit jury in the said trial.

In violation of Title 18, United States Code, Section 1503.

*Indictment*

**Count Two**

And the Grand Jury further charges:

That in or about the month of November 1962, in the Middle District of Tennessee, Nashville Division, Z. T. Osborn, Jr., the defendant herein, did unlawfully, knowingly, wilfully and corruptly endeavor to influence, obstruct and impede the due administration of justice in the United States District Court for said District and Division in the trial of *United States of America v. James R. Hoffa and Commercial Carriers, Inc.* (Criminal No. 13,241) in that the said Z. T. Osborn, Jr., did request, counsel and direct Harry Beard to contact D. M. Harrison, who was, and was known by the said Osborn to be, the husband of a juror sitting in the said trial and to offer the said Harrison \$10,000 to induce his wife to vote for an acquittal of James R. Hoffa in the said trial.

In violation of Title 18, United States Code, Section 1503.

**Count Three**

And the Grand Jury further charges:

That on or about the 27th day of November 1962, in the Middle District of Tennessee, Nashville Division, Z. T. Osborn, Jr., the defendant herein, did unlawfully, knowingly, wilfully and corruptly endeavor to influence, obstruct and impede the due administration of justice in the United States District Court for said District and Division in the trial of *United States of America v. James R. Hoffa and Commercial Carriers, Inc.* (Criminal No. 13,241) in that the said Z. T. Osborn, Jr., did request, counsel, cause and direct John Polk to attempt to arrange a meeting between the said Z. T. Osborn, Jr. and Virgil Rye, who was, and was known by the said Z. T. Osborn, Jr. to be, the husband of Geneva Rye, a petit juror sitting in the said trial for

**Indictment**

the purpose of determining the feelings of Juror Rye about said trial and for the purpose of corruptly influencing the verdict in the said trial.

In violation of Title 18, United States Code, Section 1503.

**A TRUE BILL:**

**RICHARD PALMER**

**Foreman**

**KENNETH HARWELL**

**United States Attorney**

**Attest: A True Copy**

**ANDREW H. MIZELL, Clerk**

**U. S. District Court**

**Middle District of Tennessee**

**By SKERRY GEORGE, D.C.**

**MOTION TO DISMISS INDICTMENT**

**IN THE UNITED STATES DISTRICT COURT**

**For the Middle District of Tennessee**

**Nashville Division**

**UNITED STATES OF AMERICA**

**vs.**

**Z. T. OSBORN, JR.**

**Criminal**

**No. 13,484**

**MOTION TO DISMISS THE INDICTMENT**

**BECAUSE THE GRAND JURY WAS**

**IMPROPERLY AND ILLEGALLY**

**IMPANELLED**

Comes now the defendant, Z. T. Osborn, Jr., by his counsel, and respectfully moves this Court to dismiss the indictment because the Grand Jury was improperly impanelled in that:

1. The Grand Jury was illegally constituted and impan-



*Motion to Dismiss Indictment*

elled in that the names placed in the jury box and from which the Grand Jury was drawn did not represent a fair cross section of the community, to the defendant's prejudice.

2. The Jury Commissioner and the clerk of the Court delegated their duty to select names for the jury box to other persons.

3. The names in the jury box from which the Grand Jury was selected had been suggested substantially by United States Officials, U. S. Postmasters, State Officials, bankers and employers and, under the circumstances of this case, there was a substantial discrimination against the defendant in the selection of such jurors.

4. The Grand Jury that returned the indictment was illegally constituted and impanelled because of lack of compliance with the provisions of Title 28 U.S.C.A. sections 1861, 1863 and 1864.

5. Those persons serving as suggesters and to whom the Clerk and Jury Commissioner have delegated their duty to select a fair and impartial list of prospective jurors do not themselves constitute a fair cross section of the community; but instead are a group restricted substantially to officials of the United States, the State of Tennessee, and of Federally supervised Banks operating in the Middle District of Tennessee, to the exclusion of all other cognizable groups in the community, wherefore the prospective juror panel and Grand Jury itself did not represent a fair cross section of the community and did in fact exclude cognizable segments of the community from Grand Jury service. (As appears from the Exhibits attached hereto, of the 96 suggesters used in the selection of prospective grand jurors, 45 were officers or employees of the United States; 24 were individual bankers; 8 were banks with no

*Motion to Dismiss Indictment*

individual names, only 6 persons of the 96 were not government or state officials, or bankers. The Grand Jury itself consisted of 6 farm owners, 3 farm owners having other business interests, 3 business owners, 5 business employees, 3 State or Municipal employees, 2 retired persons, 2 housewives and 1 Federal employee; all members of the Grand Jury are Protestant and no member serving on the Grand Jury is a "blue collar" worker of manual laborer. Only one member of the Grand Jury, a retired railroad engineer, is thought to have had membership in any labor union. An analysis of the 100 member Grand Jury panel carries out and further shows the exclusion of cognizable segments of the community from Grand Jury service.)

6. Said suggesters did not, in fact, accept and perform the duties delegated to them by the Clerk and Jury commissioner. They did not undertake to return a fair cross-section of their communities. They made ability to perform Jury service without financial hardship the prime criteria for selection. They were in fact not the persons in their communities most likely to return a fair cross-section but were instead prejudiced against negroes and manual laborers and many of the suggesters intentionally excluded members of these groups of their communities from jury service.

7. The foregoing matters of fact are substantially demonstrated by exhibits A through H attached and will be proven at the hearing.

8. The defendant further moves to dismiss the indictment on the grounds that the Grand Jury was unfairly re-assembled for consideration of charges against the defendant in that the Court failed in its duty to conduct a *voir dire* and ascertain on *voir dire* whether any grand juror had been influenced, biased and prejudiced against the defendant by the voluminous and continuous adverse

***Motion to Dismiss Indictment***

publicity circulated by news media in the jurisdiction of this Court respecting the defendant's disbarment; and that the Defendant was thereby deprived of his right to an unbiased Grand Jury, due process of law and equal protection of the laws.

9. In support of this motion, Defendant refers to his attached Memorandum and exhibit I.

All of which is in violation of the statutes of the United States and the rights of the defendant as provided by the Fifth and Sixth Amendments of the Constitution of the United States.

WHEREFORE, the premises considered, the defendant, Z. T. Osborn, Jr., respectfully prays as follows:

1. That the matters alleged herein be set down for a hearing and that he be permitted to offer testimony in support of the factual matters allaged herein; and
2. Upon hearing, this Court dismiss the indictment.

**JACK NORMAN, SR.**  
Attorney for Defendant  
213 3rd Ave. N.  
Nashville, Tennessee

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing motion, memorandum in support thereof and Exhibits A through H referred to therein were served upon opposing counsel by delivering the same to Kenneth Harwell, United States Attorney, at his office, United States Courthouse, this 21st day of February, 1964.

**JACK NORMAN, SR.**

*Motion to Dismiss—Exhibits*

**STATE OF TENNESSEE  
COUNTY OF DAVIDSON**

Z. T. OSBORN, JR., being first duly sworn, makes oath that the factual allegations made in his foregoing motion are true to the best of his knowledge, information and belief.

**Z. T. OSBORN, JR.**

Sworn to and subscribed before me this 21st day of February, 1964.

Notary Public

My commission expires \_\_\_\_\_.

**EXHIBIT A**

**AFFIDAVIT**

Howard H. Climer, being first duly sworn, states:

I am, and have been for many years, the Jury Commissioner for the Judicial District known as the Middle District of Tennessee, and in this capacity I cooperated with Mr. Andrew Mizell in the selection of the March Term, 1963 Grand Jury, sworn by Judge Gray on January 17, 1963. Our method of selection was as follows:

Upon being advised that a Grand Jury was to be empaneled, I wrote Mr. Clyde M. York, Jury Commissioner for the Columbia Division of the Middle District of Tennessee, and Mr. H. B. Shanks, Jury Commissioner for the Cookeville Division of the Middle District of Tennessee, and requested they return names of qualified jurors from their respective Divisions. In addition, I wrote to a citizen residing in each of 12 counties composing the Nashville Division of the Middle District of Tennessee, excluding only Wilson



*Motion to Dismiss—Ex. A, Cont'd*

and Davidson Counties, requesting that each return a list of citizens residing in his county known by him to be qualified for federal jury service. In the letter to these suggesters (which letter was identical to the specimen attached to Mr. Mizell's affidavit), I detailed the qualifications for federal jury service and advised the suggesters to return the names of persons from all walks of life, including persons of different race, sex, religion, politics and occupations, pointing out that we were interested in obtaining a fair cross-section of their community.

The particular suggesters, such as bankers and clerks and masters of State Chancery Courts, were chosen because they are the very people most likely to be acquainted with persons of varied backgrounds and most likely to return names composing a fair cross-section of their communities. Included in the suggesters I used were both male and female. Many of the suggesters were individuals I knew personally, and many others were individuals I knew by reputation.

Upon receiving the lists of possible jurors from these suggesters, I reviewed the lists and personally compiled a list of names to be placed in the jury box. To this list I added the names of 15 or 20 persons residing in Wilson County, who I knew were qualified.

With this addition the list contained more than 150 names. I then typed these names upon white cards to be placed in the jury box.

Upon being contacted by Mr. Mizell, I met with him in Nashville, and together, after emptying the jury box, each placed approximately 200 names in the jury box, alternating in putting in one name at the time. Thereafter, we drew 100 names from this box which composed the jury panel from which was selected the 23 persons who made up the instant Grand Jury.

*Motion to Dismiss—Ex. A, Cont'd*

While I did not check the qualifications of every person I placed into the box, I knew personally many of them and knew them to be qualified. I do know from experience that the suggesters I and Mr. Mizell picked do obtain only the names of qualified persons and can be relied upon to do so.

I made no effort to exclude any group from this jury box; but, on the contrary, every effort was made to secure a fair cross-section of the Middle District of Tennessee.

**HOWARD H. CLIMER**

Sworn and subscribed to before me this 9th day of July, 1963.

**BETTY J. WATSON**

Notary Public

My commission expires July 15, 1963.

**EXHIBIT A, Continued**

**SUGGESTER LIST OBTAINED FROM  
MR. HOWARD CLIMER,  
Lebanon, Tennessee**

**NAME—OCCUPATION—ADDRESS**

78. H. R. Shanks, Federal Jury Commissioner, Operator, Shanks Hotel, Cookeville, Tenn.
79. C. R. Byrn, Postmaster at Murfreesboro, Murfreesboro, Tenn.
80. Clyde M. York, Federal Jury Commissioner, President, Tennessee Farm Bureau Federation, Columbia, Tenn.
81. Sam T. Bigger, Clerk & Master at Springfield, Springfield, Tenn.
82. Mrs. Dymple Simpson, Clerk & Master at Waverly, Waverly, Tenn.

*Motion to Dismiss—Ex. A, Cont'd*

83. Albert M. Houston, Postmaster at Woodbury, Woodbury, Tenn.
84. J. B. Marshal, Clerk & Master at Hartsville, Hartsville, Tenn.
85. Mrs. Bess L. Addikson, Clerk & Master at Ashland City, Ashland City, Tenn.
86. Ethel M. Grigsby, Clerk & Master at Franklin, Franklin, Tenn.
87. J. B. Bradley, Owns Office Supply Stores at Gallatin and elsewhere, Gallatin, Tenn.
88. Hestella C. Howard, Former Postmaster at Dover, Dover, Tenn.
89. Ed M. Norman, President, First Natl. Bank, Clarks-ville, Tenn.
90. E. A. Rearden, Postmaster at Dickson, Dickson, Tenn.
91. Ruby Shackelford, Clerk & Master at Erin and owns Insurance Agency, Erin, Tenn.
92. Howard Climer, Attorney and Federal Jury Commis-sioner, Cebanon, Tenn.

**EXHIBIT B**

**AFFIDAVIT**

Andrew H. Mizell, being first duly sworn states:

I am, and have been for several years, the Clerk of the United States District Court for the Middle District of Tennessee, and as such I cooperated with Mr. Howard Climer, the Jury Commissioner of this District, in the selection of the March Term, 1963 Grand Jury sworn by Judge Gray on January 17, 1963. Our method of selection of the Grand Jury was as follows:

*Motion to Dismiss—Exhibit B, Cont'd*

When we were advised to empanel this Grand Jury, I sent a letter (identical to the specimen attached hereto) to various persons residing in the counties composing the Middle District of Tennessee, setting out in detail the qualifications for federal jury service and asking that the persons addressed return a list of persons known to them to be qualified for such service. These suggesters are requested to return the names of persons from all walks of life, a fair cross-section of the community, including persons of different race, sex, religion, politics and occupations.

The suggesters are chosen because they are the persons who would be most widely acquainted with persons of every background and more likely to return a fair cross-section of their communities. Thus, while bankers and postmasters are used considerably, it is because they are the very people most likely to know persons with varied backgrounds and thus most likely to return a fair cross-section of their particular community.

Among the persons I selected as suggesters for the Grand Jury in question, were Negroes as well as White, females as well as male, and working people as well as businessmen and bankers. I have reviewed the list of suggesters submitted by defendants and agree that this list includes the suggesters actually returning names to me. The list does not include a number of other suggesters to whom I wrote, however, because these suggesters returned no names.

When these suggesters returned names of qualified persons, I went over the list and prepared the names for insertion in the jury box. I did not personally check the qualifications of every person whose name was submitted, for it has been my experience that the suggesters I and Mr. Climer pick do return only the names of qualified persons and can be relied upon to do so. Thus I have observed



*Motion to Dismiss—Exhibit B, Cont'd*

the empaneling and swearing of many grand and petit juries selected in this District in this manner and have noted that practically every name drawn from the box has been that of a qualified person.

In addition to the names I secured from suggesters, I selected, on my own without advice from any judge or other Government official, 15 to 20 names of persons I know to be qualified.

When I had secured sufficient names, Mr. Climer and I met, emptied the jury box, and, in the presence of witnesses, each put in 200 names, alternating in putting in one name at the time. Immediately thereafter, we drew 100 names from the box and these persons became the panel from which were selected the 23 persons who made up the instant Grand Jury.

I made no effort to exclude any group from the jury box. On the contrary, my every effort throughout was to secure a fair cross-section of the community—the Middle District of Tennessee.

**ANDREW H. MIZELL**

Sworn and subscribed to before me this 5th day of July, 1963.

My commission expires

**BONNIE M. MORAN**

Notary Public

**(LETTER)**

**JUDGES**

**HON. WILLIAM E. MILLER**

**HON. FRANK GRAY, JR.**

**ANDREW H. MIZELL**

**CLERK**

*Motion to Dismiss—Exhibit B, Cont'd*

**UNITED STATES DISTRICT COURT**

**OFFICE OF THE CLERK**

**MIDDLE DISTRICT OF TENNESSEE**

**Nashville 3**

We plan to draw a jury in the near future and would appreciate it if you would send us the names of some persons in your community who are qualified for federal jury service.

For your guidance and information we quote the pertinent provisions of the statute defining "Qualifications of Federal jurors."

"Any citizen of the United States who has attained the age of twenty-one years and who has resided for a period of one year within the judicial district, is competent to serve as a grand or petit juror unless—

- (1) He has been convicted in a State or Federal court of record of a crime punishable by imprisonment for more than one year and his civil rights have not been restored by pardon or amnesty.
- (2) He is unable to read, write, speak, and understand the English language.
- (3) He is incapable, by reason of mental or physical infirmities to render efficient jury service."

What we ask from you is a list of persons from this important public service which will be a fair cross-section of the entire population of your community, representing both men and women of all races in all walks of life and having a variety of backgrounds, occupations, callings, economic classifications, religious and political affiliations, and other recognized groupings or classifications.

For your convenience, we are enclosing a blank form on

***Motion to Dismiss—Exhibit B, Cont'd***

which you may list the names, together with a self-addressed franked envelope.

We would appreciate it if you would send us your list of names as soon as possible.

Very truly yours,  
Andrew H. Mizell  
Clerk

**EXHIBIT B, Continued**

**SUGGESTERS—U. S. District Court Clerk**

1. M. G. Ferguson, President Citizens Savings Bank & Trust Co., Nashville, Tenn.
2. Dr. Harold D. West, President Meharry Medical College, Nashville, Tenn.
3. Matt M. Lofton, Postmaster, Montgomery County, Clarksville, Tenn.
4. W. C. Ashworth, Postmaster Williamson County, Franklin, Tenn.
5. Alva A. Duffield, Postmaster, Brentwood, Tennessee.
6. Edward M. Norman, President First National Bank, Clarksville, Tenn.
7. E. R. Rainwater, Postmaster Houston County, Erin, Tenn.
8. J. W. Greer, Jr., President Harpeth National Bank, Franklin, Tenn.
9. Edgar W. Freedle, Postmaster Trousdale County, Hartsville, Tenn.
10. George R. Gunn, Postmaster, Springfield, Tenn.
11. Bessie H. Parrish, Postmaster, Hermitage, Tenn.

*Motion to Dismiss—Exhibit B, Cont'd*

12. H. N. O'Callaghan, Vice President American National Bank, Nashville, Tenn.
13. Mrs. Ruby Thompson, Vice President Hartsville Bank, Hartsville, Tenn.
14. William Dalton, President Citizens Bank, Hartsville, Tenn.
15. Mrs. Fred Gentry, Housewife, McEwen, Tenn.
16. Mrs. Cecilia S. England, Postmaster, Whites Creek, Tenn.
17. Albert M. Houston, Postmaster Cannon County, Woodbury, Tenn.
18. Jim Farley, Asst. Postmaster Wilson County, Lebanon, Tenn.
19. W. C. Howell, President Dover Peoples Bank & Trust Co., Dover, Tenn.
20. C. R. Byrn, Postmaster Rutherford County, Murfreesboro, Tenn.
21. Clarence Larkins, Vice President Farmers & Merchants Bank, White Bluff, Tenn.
22. Bank of College Grove, College Grove, Tenn.
23. LeRoy M. Cook, Postmaster Sumner County, Gallatin, Tenn.
24. Postmaster Dickson County, Dickson, Tenn.
25. E. H. Meeks, Jr., Cashier 1st National Bank Dickson, Dickson, Tenn.
26. Mary Watkins, Postmaster, Goodlettsville, Tenn.
27. Mabel B. Reasoner, Postmaster, Joelton, Tenn.
28. Fannie C. Taylor, Postmaster, Antioch, Tenn.



*Motion to Dismiss—Exhibit B, Cont'd*

29. J. C. Garrett, President Bank of Goodlettsville, Goodlettsville, Tenn.
30. Tom H. Wilson, Postmaster, Madison, Tenn.
31. Northern Bank of Tenn., Clarksville, Tenn.
32. Sam Lasseter, V.P. & Mgr. Commerce Union Bank, Murfreesboro, Tenn.
33. Gray D. Sands, Postmaster, Old Hickory, Tenn.
34. Morris F. Dozier, Postmaster Cheatham County, Ashland City, Tenn.
35. First Trust & Savings Bank, Clarksville, Tenn.
36. Citizens Bank of Waverly, Waverly, Tenn.
37. Pres. Sumner County Bank & Trust Co., Gallatin, Tenn.
38. A. C. Earle, Cashier 1st & Peoples National Bank, Gallatin, Tenn.
39. M. B. Carr, Cashier Farmers & Merchants Bank, Bethpage, Tenn.
40. Pres. Dickson County Banking Company, Charlotte, Tenn.
41. Thomas L. Smith, Jr., Teller Erin Bank & Trust Company, Erin, Tenn.
42. Oneida Lyons, Asst. Vice Pres. Commerce Union Bank, Springfield, Tenn.
43. L. R. Huffine, Retired, DuPont, Goodlettsville, Tenn.
44. Robt. F. Sexton, Postmaster Stewart County, Stewart, Dover, Tenn.
45. W. T. Newton, County Judge Lawrence County, Lawrenceburg, Tenn.

*Motion to Dismiss—Exhibit B, Cont'd*

46. T. J. Liggett, Postmaster Maury County, Columbia, Tenn.
47. Postmaster Marshal County, Lewisburg, Tenn.
48. A. D. Bovington, Cashier 1st National Bank, Lawrenceburg, Tenn.
49. W. T. Startrich, Postmaster Lewis County, Hohenwald, Tenn.
50. Postmaster Giles County, Pulaski, Tenn.
51. R. E. McBride, Postmaster Lewisburg, Tenn.
52. T. M. Waters, Cashier & Exec. Vice Pres. Peoples Bank, Clifton, Tenn.
53. F. A. Goodman, President Hohenwald Bank & Trust Co., Hohenwald, Tenn.
54. First National Bank Pulaski, Pllaski, Tenn.
55. Chester P. Webb, Postmaster Lawrence County, Lawrenceburg, Tenn.
56. T. G. Horner, Postmaster Hickman County, Centerville, Tenn.
57. J. Gill Thompson, Vice President First National Bank of Centerville, Centerville, Tenn.
58. Farmers & Merchants Bank Mt. Pleasant, Tenn., Maury County.
59. H. C. Johnson, Postmaster Macon County, Lafayette, Tenn.
60. C. K. Mahler, Postmaster Putnam County, Cookeville, Tenn.
61. John E. Carter, Postmaster White County, Sparta, Tenn.

*Motion to Dismiss—Exhibit B, Cont'd*

62. Lavern M. Tabor, Postmaster Cumberland County, Crossville, Tenn.
63. Paul Birdwell, Cashier & Vice President Jackson County Bank, Gainesboro, Tenn.
64. Postmaster Fentress County, Jamestown, Tenn.
65. Chas. H. Settle, Postmaster Jackson County, Gainesboro, Tenn.
66. John E. Carter, Pastmaster White County, Sparta, Tenn.
67. E. T. Morris, Postmaster Smith County, Carthage, Tenn.
68. J. B. Overstreet, Postmaster Clay County, Celina, Tenn.
69. C. M. King, Cashier Bank of Celina, Celina, Tenn.
70. John Taylor, Pres. Pickett County Bank & Trust Co., Byrdstown, Tenn.
71. Postmaster Pickett County, Byrdstown, Tenn.
72. Gene Keyes, Cashier, Director, Vice President 1st National Bank Crossville, Crossville, Tenn.
73. L. K. Mahler, Postmaster Putnam County, Cookeville, Tenn.
74. Postmaster Overton County, Livingston, Tenn.
75. E. P. Lassiter, Postmaster DeKalb County, Smithville, Tenn.
76. Dr. W. S. Davis, President A & I University, Nashville, Tenn.
77. Raymon Kea, Postmaster Wayne County, Waynesboro, Tenn.

*Motion to Dismiss Indictment*

**EXHIBIT C**

**CATEGORIES—SUGGESTERS**

**Officials—United States**

3. Matt M. Lofton
4. W. C. Ashworth
5. Alva A. Duffield
7. E. R. Rainwater
9. Edgar W. Freedle
10. George R. Gunn
11. Bessie H. Parrish
16. Mrs. Cecilia S. England
17. Albert M. Houston
18. Jim Farley
20. C. R. Byrn
23. LeRoy M. Cook
26. Mary Watkins
27. Mabel B. Reasoner
28. Fannie C. Taylor
30. Tom H. Wilson
33. Gray D. Sands
34. Morris F. Dozier
44. Robert F. Sexton
46. T. J. Liggett
49. W. T. Startrich
51. R. E. McBride
55. Chester P. Webb
56. T. G. Horner
59. H. C. Johnson
60. L. R. Mahler
61. John E. Carter
62. Lavern M. Tabor
68. J. B. Overstreet
73. L. K. Mahler



*Motion to Dismiss—Exhibit C, Cont'd*

- 75. E. P. Lassiter
- 77. Raymon Kea
- 79. C. R. Byrn
- 83. Albert M. Houston
- 90. E. A. Rearden

**Officials—State**

- 45. W. T. Newton
- 81. Sam T. Bigger
- 82. Mrs. Dymple Simpson
- 84. J. B. Marshal
- 85. Mrs. Bess L. Arkinson
- 86. Ethel M. Grigsby
- 91. Ruby Shackelford

**Individual Bankers**

- 1. M. G. Ferguson
- 6. Edward M. Norman
- 8. J. W. Greer, Jr.
- 12. H. N. O'Callaghan
- 13. Mrs. Ruby Thompson
- 14. William Dalton
- 19. W. C. Howell
- 21. Clarence Larkins
- 25. E. H. Meeks, Jr.
- 29. J. C. Garrett
- 32. Sam Lasseter
- 38. A. C. Earle
- 39. M. B. Carr

**Officials—United States**

- 65. Charles H. Settle
- 66. John E. Carter
- 67. E. T. Morris
- 52. T. M. Waters
- 53. F. A. Goodman

*Motion to Dismiss—Exhibit C, Cont'd*

- 57. J. Gill Thompson
- 63. Paul Birdwell
- 69. C. M. King
- 70. John Taylor
- 72. Gene Keyes
- 89. Ed M. Norman

**Banks—Individual Not Named**

- 22. Bank of College Grove
- 31. Northern Bank of Tennessee
- 35. First Trust & Savings Bank
- 36. Citizens Bank of Waverly
- 37. Pres. Sumner County Bank & Trust Co.
- 40. Pres. Dickson County Banking Company
- 54. First National Bank Pulaski
- 58. Farmers & Merchants Bank

**Officials—Not Named**

- 2. Dr. Harold D. West, President, College
- 24. Postmaster Dickson County
- 47. Postmaster Marshal County
- 50. Postmaster Giles County
- 71. Postmaster Pickett County
- 64. Postmaster Fentress County
- 74. Postmaster Overton County

**Individual Bankers—(Con't.)**

- 41. Thomas L. Smith, Jr.
- 42. Oneida Lyons
- 48. A. D. Bovington

**Other—Specify Occupation**

- 15. Mrs. Fred Gentry, Housewife
- 43. L. R. Huffine, Retired Dupont
- 80. Clyde M. York, President Farm Bureau
- 88. Hestella C. Howard, Former Postmaster

**Motion to Dismiss—Exhibit C, Cont'd**

**Professions**

- 76. Dr. Davis, President A & I University
- 92. Howard Climer, Attorney

**Businessmen**

- 78. H. R. Shanks
- 87. J. B. Bradley

**(The Grand Jury Panel)**

**EXHIBIT D**

**IN THE DISTRICT COURT OF THE  
UNITED STATES**

**Middle District Tennessee**

**Columbia—Nashville—Northeasters**

The following were duly and legally drawn by Andrew H. Mizell, Clerk and Howard Climer, Jury Commissioner, January 9, 1963, to compose a second Grand Jury, to serve during any regular, adjourned or special term of Court for the Nashville, Columbia and Northeastern Divisions.

**Name — Address**

- 1. O. B. Alexander, Woodbury, Tenn., Cannon County
- 2. Alf Anderson, R2, Clifton, Tenn., DeKalb County
- 3. Harvey Caplinger, Alexandria, Tenn., Giles County
- 5. Mrs. Walter B. Driver, River St., Hartsville, Tenn., Trousdale County
- 6. Mrs. John Cook, Earheart Rd., Mt. Juliet, Tenn., Davidson County
- 8. Bobby Perry, 814 W. Coy Cl., Clarksville, Montgomery County
- 9. Mrs. J. B. Brasier, Castalian Springs, Tenn., Sumner County

*Motion to Dismiss—Exhibit D, Cont'd*

**Name — Address**

10. Mrs. Walter Nunnely, Nunnely, Tenn., Hickman County
11. Ray Cowden, Sparta, Tenn., White County
12. Richard Palmer III, c/o Palmer Produce Co., Murfreesboro, Tenn., Rutherford County
13. Sam Cook, 613 W. Spring St., Lebanon, Wilson County
14. James Avant, Alexandria, Tenn., DeKalb County
15. G. H. Lynn, R2, Celina, Tenn., Clay County
16. T. O. Cochran, R2, Antioch, Tenn., Davidson County
17. Eugene Orgothorpe, R5, LaFayette, Tenn., Macon County
18. Cordell Stockton, Algood, Tenn., Putnam County
19. Otey J. Porter, Williamsport, Tenn., Maury County
20. Jimmy Harper, 704 Vandview Dr., Lebanon, Tenn., Wilson County
21. W. L. Russell, R2, Red Boiling Springs, Tenn., Clay County
22. D. C. Gardner, Williamsport, Tenn., Hickman County
23. D. R. Huggins, Hohenwald, Tenn., Lewis County
24. Clarence O. Duggin, Bradyville Pike, Murfreesboro, Tenn., Rutherford County
25. Lloyd E. Carroll, Jacqueline Drive, Lawrenceburg, Tenn., Lawrence County
26. L. M. Thompson, Hillsboro Rd., Franklin, Tenn., Williamson County
27. Alf Mason, PO Box 23, Woodbury, Tenn., Cannon County
28. R. W. Ritter, Sr., 360 Beechcrest Drive, Lewisburg, Tenn., Marshall County
29. Foster Andrews, R7, Lebanon, Tenn., Wilson County
30. Mrs. Irene Alexander, 209 Admiral Circle, Lawrenceburg, Tenn., Lawrence County
31. James H. Nash, Erin, Tennessee, Houston County



*Motion to Dismiss—Exhibit D, Cont'd*

**Name — Address**

32. J. W. Gross, R7, Clarksville, Tenn., Montgomery County
33. Carl Wells, Grimsley, Tenn., Fentress County
34. Lewis B. Waller, 275 Tanglewood Drive, Clarksville, Tenn., Montgomery County
35. Martin Henry Bayer, Cumberland City, Tenn., Stewart County
36. Lee McCartney, 407 Wrather, Murfreesboro, Tenn., Rutherford County
37. Mrs. Carolyn Smith, PO Box 274, Ashland City, Tenn., Cheatham County
38. George B. Williamson, Old Springfield Road, Goodlettsville, Davidson County
39. Mrs. Alton Hughes, Box 55, Goodlettsville, Tenn., Davidson County
40. Pilbert Adcock, Greenbrier, Tenn., Robertson County
41. Condred Brewer, Waynesboro, Tenn., R4, Wayne County
42. George Bateman, R4, Erin, Tenn., Houston County
43. A. B. Qualls, Jr., Livingston, Tenn., Overton County
44. Valter Miller, Smithville, Tenn., DeKalb County
45. Sam O. Garner, 202 Baird Lane, Mufreesboro, Rutherford County
46. Clarence Woodard, Riddleton, Tenn., Smith County
47. Avery Roberts, Ashland City, Tenn., Cheatham County
48. Draper Keisling, R1, Crossville, Tenn., Cumberland County
49. Vernon Fellows, Tennessee Ridge, Tenn., Houston County
50. W. E. Webster, R5, Cookeville, Tenn., Putnam County
51. James W. Owen, RR, Hartsville, Tenn., Trousdale County
52. Charles Cassetty, Gainesboro, Tenn., Jackson County

*Motion to Dismiss—Exhibit D, Cont'd*

**Name — Address**

53. E. C. Eggert, Brentwood, Tenn., Davidson County
54. Perry Ray, R4, Gainesboro, Tenn., Jackson County
55. John Coleman, R4, Murfreesboro, Tenn., Rutherford County
56. Edward J. Shea, 200 Olive Branch Rd., Nashville, Davidson County
57. F. M. Powers, Tennessee Ridge, Tenn., Houston County
58. Mrs. Donald Anderson, 435 No. Spring, Murfreesboro, Rutherford County
59. R. M. Benson, R2, Ethridge, Tenn., Lawrence County
60. Arnie Cashon, Waverly, Tenn., Humphreys County
61. L. H. Williams, 1301 DeBow St., Old Hickory, Davidson County
62. Carl D. Alexander, 819 Fair Ave., Lawrenceburg, Lawrence County
63. Albert Alsup, R3, Murfreesboro, Tenn., Rutherford County
64. Martha P. Austin, R2, Antioch, Tenn., Davidson County
65. Walter O. Phillips, Box 32, Mt. Juliet, Tenn., Wilson County
66. Richard Hawkins, Madison Terrace, Clarksville, Montgomery County
67. Ernest Felts, Sr., R2, Joelton, Tenn., Davidson County
68. Melville M. Morris, 524 W. Hillwood Blvd., Nashville, Davidson County
69. Powell D. Garrison, Crossville, Tenn., Cumberland County
70. Roy Tate, Waverly, Tenn., Humphreys County
71. Don King, 227 Cumberland Dr., Lebanon, Wilson County
72. C. S. Stanfield, Whites Creek, Tenn., Davidson County
73. Wm. Beasley, Dixon Springs, Tenn., Smith County

*Motion to Dismiss—Exhibit D, Cont'd*

**Name — Address**

74. J. A. Armstrong, Hohenwald, Tenn., Lewis County
75. Ray Connor, Box 12, Hermitage, Tenn., Davidson County
76. Chester L. Hayes, Blue Brick Dr., Donelson, Tenn., Davidson County
77. Mrs. Birtie H. Merryman, Church St., Hartsville, Tenn., Trousdale County
78. L. Darris Kelly, Blackburn Dr., Nashville, Tenn., Davidson County
79. Marshal Dutton, Whites Creek, Tenn., Davidson County
80. T. B. Gregory, RR, Castalian Springs, Tenn., Trousdale County
81. P. R. Breeden, Charlotte, Tenn., Dickson County
82. Thos. B. Mayberry, Sparta, Tenn., White County
83. Chas. P. Arnold, Sr., R2, Antioch, Tenn., Davidson County
84. R. T. Chandler, R1, Centerville, Tenn., Hickman County
85. Charlie Morgan, R3, Gainesboro, Tenn., Jackson County
86. Lecil Boatman, Banker Hill Rd., Cookeville, Putnam County
87. Robert Turney, 336 Peachtree St., Cookeville, Putnam County
88. John A. Galloway, 2020 Clifton Rd., Nashville, Davidson County
89. Johnnie Harlin, c/o Wilson County Hdwe Co., Lebanon, Tenn., Wilson County
90. Mrs. Annie Robinson, R2, Joelton, Tenn., Davidson County
91. Mrs. Felix Zuccarello, R2, Pulaski, Tenn., Giles County

***Motion to Dismiss—Exhibit D, Concluded***

**Name — Address**

92. J. T. Christian, PO Box, Lawrenceburg, Tenn., Lawrence County
93. John E. Cain, Jr., 1101 Belle Meade Blvd., Nashville, Tenn., Davidson County
94. Earl Napier, Celina, Tenn., Clay County
95. C. M. Dardon, Timber Lane, Nashville, Tenn., Davidson County
96. Mrs. N. E. Whiting, R1, Antioch, Tenn., Davidson County
97. Robert C. Brown, 318 McClain, Lebanon, Tenn., Wilson County
98. W. R. Holt, 269 Martingale Rd., Old Hickory, Tenn., Davidson County
99. I. C. Taylor, 403 Lawrence St., Old Hickory, Tenn., Davidson County
100. Thomas Faulkner, 828 E. Castle, Murfreesboro,utherford County

We, Andrew H. Mizell, Clerk and Howard Climer, Jury Commissioner, hereby certify that the foregoing were duly and legally drawn by us at Nashville, Tennessee, on January 9, 1963, to compose a second Grand Jury for the Middle District Tennessee.

/s/ ANDREW H. MIZELL  
Andrew H. Mizell, Clerk

/s/ HOWARD CLIMER  
Howard Climer, Jury Commissioner

Witness:

/s/ H. N. O'CALLAGHAN

/s/ D. D. COWEN

January 9, 1963



*Motion to Dismiss Indictment*

**EXHIBIT E**

**ANALYSIS**

No. of Juror	Business	Race	Religion	Sex	Labor
20	Credit Mgr.	W	Meth.	M	No
29	Ret. P.O.	W	C of C	M	No
65	Ret. Mgr. Phone Co.	W	Baptist	M	No
71	Owner-business	W	Baptist	M	No
89	Ret. Life Ins.	W	C of C	M	No
97	Owner, lumber bs.	W	Pref C of C	M	No
25	Mgr. auto business	W	Meth.	M	No
28	Mgr. Tire	W	Baptist	M	No
30	Sec'y, Chamber Commerce (husband Insurance)	W	Meth.	F	No
41	Foreman Hwy-Dept.	W	Pref. C of C	M	No
2	Farmer	W	Holiness	M	No
4	Farmer	W	C of C	M	No
19	Salesman, Hdw.	W	Meth.	M	No
23	Part-time Hiway Dept.	W	None	M	No
59	Ret. P.O.	W	C of Ch	M	No
62	Factory worker Bicycle plant	W	Meth.	M	No
77	Ret. Steel Worker	W	Meth.	M	Yes
91	Teacher	W	Presby.	F	No
92	Preacher, caretaker, St. Park	N	C of Ch.	M	No
8	Salesman, Grocery	W	Meth.	M	No
34	Supt. Machine Shop	W	Meth.	M	No
46	Labor foreman Hiway Dept.	W	Baptist	M	No
81	Farmer	W	C of Ch.	M	No
73	Farmer	W	Baptist	M	No
45	Retired	W	Non-Sect.	M	No

*Motion to Dismiss—Exhibit E, Cont'd*

No. of Ja. or	Business	Race	Religion	Sex	Labor
36	Retired (deceased)	W	C of Ch.	M	No
63	Farmer	W	C of Ch.	M	No
55	Farmer	W	Protestant	M	No
100	Plaster contractor	N	Protestant	M	No
66	Bank Pres.	W	Meth.	M	No
12	Owens produce Co.	W	C of Ch.	M	No
68	Owens business	W	Jewish	M	No
24	Head Receiving				
	Clk, Grocery	W	C of Ch.	M	No
58	Club Secty	W	Episcopal	F	No
37	H.W. (husband				
	grocery clerk)	W	Episcopal	F	No
42	Farmer	W	Meth.	M	No
32	Farmer-Ins.				
	Salesman	W	Meth.	M	No
13	Owens hdw. store	W	Presby.	M	No
47	Auto mechanic	W	Meth.	M	No
7	Mgr. Tire Co.	W	Meth.	M	No
75	Ret. Supervisor				
	Oil Co.	W	Presby.	M	No
6	Housewife	W	Baptist	F	No
95	Ret. L & N				
	Supervisor	W	Presby.	M	No
56	Mgr. Hospital	W	Catholic	M	No
72	Ret. (Rail Engr.)	W	C of Ch.	M	No
79	Farmer	W	Episcop.	M	No
78	Ret. Supervisor				
	Oil Co.	W	Ch. Scientist	M	No
93	V.P. Cain-Sloan	W	Catholic	M	No
98	Ret. Supervisor,				
	Factory	W	Meth.	M	No
64	Housewife (husband				
	Farmer)	W	C of Ch.	F	No
16	Farmer	W	Presby.	M	No

*Motion to Dismiss—Exhibit E, Cont'd*

No. of Juror	Business	Race	Religion	Sex	Labor
83	Ret. Rd. Laborer	N	Baptist	M	No
76	Factory worker	W	Meth.	M	No
17	Farmer	W	C of Ch.	M	No
21	Farmer	W	C of Ch.	M	No
88	Ret. School Prin.	N	Protestant	M	No
6	Housewife	W	Baptist	F	No
39	P.O. Clerk (Husband?)	W	C of Ch.	F	No
52	Ins. Agent	W	C of Ch.	M	No
67	Farmer	W	Pref. Bapt.	M	No
90	Cook	W	Baptist	F	No
77	Ins. Agent (husband is Postmaster)	W	C of Ch.	F	No
85	Ret. Farmer	W	C of Ch.	M	No
54	Ret. Farmer	W	C of Ch.	M	No
99	Factory worker	W	C of Ch.	M	No
61	Ret. Factory lbr.	W	Baptist	M	No
40	Equipment Operator	W	Baptist	M	No
9	Housewife, hus- band farmer	W	Meth.	F	No
80	Farmer	W	Baptist	M	No
15	Farmer	W	Meth.	M	No
51	Farmer	W	C of Ch.	M	No
5	Owns flower busi- ness-husband?	W	Meth.	M	No
98	Ret. Supervisor Factory	W	C of Ch.	M	No
94	Owner, restaurant	W	C of Ch.	M	No
38	Ret. Rd. Engr.	W	Meth.	M	No
86	Elementary princpl.	W	C of Ch.	M	No
87	Sprvsr. Laundry	W	Meth.	M	No
48	Farmer	W	Congr.	M	No
69	Owner, gas Sta.	W	Baptist	M	No

*Motion to Dismiss—Exhibit E, Concluded*

No. of Juror	Business	Race	Religion	Sex	Labor
18	Mgr. store & Farmer	W	Meth.	M	No
50	Shipping Clk. & Sheriff	W	Baptist	M	No
11	Teacher	W	Meth.	M	No
82	Owner, Hardware	W	Presby. or C of Ch.	M	No
49	Supt. Brass Co.	W	Meth.	M	No
57	Inventor	W	None	M	No
60	Ret. Rd. Employee	W	Prot.	M	Yes
31	Ret. Factory Guard				
10	Housewife, husband-farmer	W	Prot.	M	Yes
		W	Meth.	F	No
53	Oil Co.	W	Prot.	M	No
70	Carpenter	W	Nazarene	M	No
35	Farmer	W	Meth.	M	No
27	Farmer	W	C of Ch.	M	No
1	Postmaster, farmer	W	Baptist	M	No
43	Businessman	W	C of Ch.	M	No
26	Businessman	W	Prot.	M	No
14	Businessman	W	Prot.	M	No
3	Barber				
44	Businessman-Farmer	W	Prot.	M	No
		W	Prot.	M	No
33	Businessman	W	C of Ch.	M	No
84	Farmer	W	Prot.	M	No
22	Farmer	W	Meth.	M	No



*Motion to Dismiss Indictment*

**EXHIBIT F**

**ANALYSIS**

**Grand Jury—Middle District of Tennessee**

**Farmers (Owners)**

Panel No.	Name	Race	Religion	Sex	Organ. Labor
2	Alf Anderson	W	C of Ch.	M	No
17	Eugene Orgothorpe	W	C of Ch.	M	No
21	W. L. Russell	W	C of Ch.	M	No
42	G. H. Bateman	W	Meth.	M	No
27	Alf Mason	W	C of Ch.	M	---
48	Draper Keisling	W	Congr.	M	No

**Farmer Owners with Other Business Interests**

Panel No.	Name	Other Business	Race	Relig.	Sex	Organ. Labor
18	Cordell Stockton	Mgr. Store	W	Meth.	M	No.
32	J. W. Cross	Ins. Sales- man	W	Meth.	M	No.
44	Valter Miller	Unknown	W	Prot.	M	--

**Business Owners**

Panel No.	Name	Type Business	Race	Relig.	Sex	Organ. Labor
12	Richard Palmer, III	Produce Co.	W	C of ch	M	No
13	Sam Cook	Hardware Store	W	Presby.	M	No
33	Carl Wells	Grocery Store, Pool Room, Farm	W	C of God	M	No

*Motion to Dismiss—Exhibit F, Cont'd*

**Business Employees**

Panel No.	Name	Position	Race	Relig.	Sex	Organ. Labor
7	Kelly L. Atkins	Mgr. Tire Co.	W	Meth.	M	No
19	O. J. Porter, Jr.	Salesman, Hard-ware	W	Meth.	M	No
25	Lloyd E. Carroll	Mgr. Auto Bus.	W	Meth.	M	No
30	Mrs. I. Alexander	Sec'y. Chamber of Commerce (Husb. Ins.)	W	Meth.	F	No
53	E. C. Eggert	Oil Company General Duties	W	Prot.	M	No

**Retired Persons**

Panel No.	Name	Former	Race	Relig.	Sex	Organ. Labor
38	Geo. B. Williamson	(Ret). Railroad Eng.	W	Meth.	M	Yes
99	I. W. Taylor	(Ret). Factory Worker	W	C of C	M	No

**State or Municipal Employees**

Panel No.	Name	Position	Race	Relig.	Sex	Organ. Labor
41	Conrad Brewer	State, Foreman, Highway Dept.	W	Pref. C of C	M	No

**Motion to Dismiss—Exhibit F, Concluded**

No. of Juror	Business	Race	Religion	Sex	Labor
46	Clarence Woodard	State, Foreman, Highway Dept.	W Baptist	M	No
47	Avery Roberts	Auto Mechanic State of Tenn. Garage, Charlotte	W Meth.	M	No

**Federal Employees**

Panel No.	Name	Position	Race	Relig.	Organ. Sex	Labor
39	Mrs. Alton Hughes	P.O. Clerk (Husband?)	W	C of C	F	No

**Housewives**

Panel No.	Name	Race	Religion	Sex	Labor
6	Mrs. John Cook	W	Baptist	F	No
37	Mrs. Carolyn Smith (Husband groc clk)	W	Meth.	F	No
No. of Protestants		Other Religions			
25		0			

*Motion to Dismiss Indictment*

**EXHIBIT G**

**AFFIDAVIT**

**STATE OF TENNESSEE)  
COUNTY OF DAVIDSON)**

**DAVID W. McMACKIN**, being first duly sworn, states:

That he is an attorney duly licensed and practicing law in Nashville, Davidson County, Tennessee, with offices in 1300 Life and Casualty Tower. That he accepted employment for the investigation of persons serving as Suggesters and submitting names of prospective jurors to the United States District Court Clerk and Jury Commissioner. In accomplishing his investigation, he personally interviewed seventeen (17) Suggesters in their respective home communities during the period Septmbr 8-14, 1963. That he made and has preserved notes of his interviews with each Suggester.

That the seventeen Suggesters interviewed stated, with one exception, that they had made no effort to better acquaint themselves with their communities and to better familiarize themselves with various cognitable elements of their communities since undertaking to serve as Suggesters. The one possible exception would be the case of the Clerk and Master of Williamson County, who stated that she had, after undertaking to serve, inquired around the Court House about people, whose names had been brought to her attention, with whom she was not personally acquainted.

That no Suggester made use of any lists which might be expected to contain the names of people without exclusion because of race, religion, or financial status and thus provide a cross-section of the community and names of persons within the community with whom they were not personally acquainted. Several Suggesters did state that they used

*Motion to Dismiss—Exhibit G, Cont'd*

the telephone book in recalling names of persons known to them who might be qualified to serve as jurors. The Postmaster of Marshall County, stated that he used his route books and the Postmaster of Lawrence County, stated that he used the city directory in order to bring personal acquaintances to mind.

That every Suggester, with possibly two or three exceptions, stated that the primary consideration in their selection of prospective jurors was whether the individual could undertake jury service without being subjected to financial hardship. This great majority of Suggesters stated that they therefore did not send in the names of manual laborers, blue collar workers, or working farmers, not by reason of any prejudice against them but because these groups in the community could not afford the hardship of jury service, especially in the summer months. The Clerk and Master of Humphreys County, stated that she did not pick anyone in which jury service would cause a hardship because they would "just get excused anyway." The Postmaster of Rutherford County, now retired, stated that he "favored older people and volunteers" when he made up his list. The Clerk and Master of Williamson County, stated that she included a name of a volunteer and the Postmaster of Williamson County stated that he tried to find retired people who "actually might enjoy serving on the jury."

That every Suggester gave evidence of some degree of prejudice against Negroes. Not one Suggester stated that he or she would associate with Negroes on a social basis. The Clerk and Master of Humphreys County stated that she knew most of the Negroes in this county and that they were "ignorant and untrustworthy and therefore not qualified." She further stated that she personally knew of no qualified negro, but understood one had served on a jury in this county. She said that she certainly wouldn't like to



*Motion to Dismiss—Exhibit G, Cont'd*

have one sitting on a jury trying her. The retired Postmaster of Ruhterford County stated that Negroes and Jews were "underprivileged and downtrodden" and therefore had a "tendency to stick together." He would not like to have one either for or against him and would be hesitant in having one sit on a jury trying him. He further stated that Negroes were getting favored treatment now and that they were after superiority rather than equality. He would not like oneto come to his Church. He mentioned an instance in Texas where Negroes were pushed ahead of whites who had more seniority in the Postal Department, and said that instances like this were breaking down the structure of Civil Service. He stated that they were a hindrance to Postal management due to the fact that you had to be careful how you treated them and must take any complaints to a grievance committee. He further stated that he would examine a Negroe's qualifications more closely than those of a white person. The Postmaster from Marshall County stated that there were just a few Negroes which he felt would be qualified in his county. The Postmaster from Wayne County stated that there was only one qualified Negro in his county. The Suggester from the First National Bank of Centerville stated that there were few qualified Negroes in this area. He said that he wouldn't want them to come to his Church because he would know they would not be doing so in good faith. The Suggester from the First National Bank of Pulaski stated that he had never included a Negro on one of his lists, although there were a few who were qualified. The Suggester from the Hohenwald Bank & Trust Company of Hohenwald has never included a Negro on his lists because "there are just a few in this county and they are illiterate." The Suggester from the First National Bank of Lawrenceburg stated that there were only one or two qualified Negroes that he knew of. He said that they had had no trouble with the Negroes but would

*Motion to Dismiss—Exhibit G, Cont'd*

not like to have them demonstrate in his Church. He sowed me a newspaper clipping from The Banner which he had on his desk which quoted Lincoln as stating that he was not advocating total "equality" among the races and that the Colored race probably was not qualified for jury service. The Suggester of the Farmers & Merchants Bank of Mt. Pleasant stated that there were some Negro teachers here that he felt would be qualified. The Postmaster of Maury County stated that they hadn't tried to come to his Church and that "fortunately they hadn't had any trouble with them yet." When asked his personal feelings toward Negroes he stated that it was none of my business. The Postmaster from Antioch stated that the Southern people won't stand for this thing to be rammed down their throats. The Postmaster from Williamson County said that he was raised with bias against Negroes but hoped he had gotten over most of it.

That the Suggester from the First National Bank of Centerville stated that he hoped I didn't find out anything to help that Hoffa.

That the Postmaster of Hickman County stated that he could give no information unless permission was granted by his solicitor.

That there were a few discrepancies found on the Suggester list. That R. K. McBride, listed on page 3 of the list of Suggesters as the Postmaster of Marshall County, Tennessee, is not the Postmaster but rather is Mr. R. L. McBride, an officer of the First National Bank of Lewisburg, Tennessee, the Postmaster being Mr. Joe L. Richardson. That A. D. Bevington also listed on page 3 as a cashier of the First National Bank of Lawrenceburg is actually Mr. A. D. Boynton and finally that several of the Postmasters listed have retired and one has since died.

That the interviews granted by two of the Suggesters were inconclusive due to the unwillingness of the Suggester

***Motion to Dismiss—Exhibit G, Cont'd***

to answer questions or grant the necessary time; but of those interviewed, fifteen seemed to desire to cooperate. Further affiant sayeth not.

David W. McMackin

SWORN TO AND SUBSCRIBED before me this 18th day of September, 1963.

Gail Cobbs  
Notary Public

My Commission expires: February 6, 1967.

**EXHIBIT G, Continued**

**AFFIDAVIT**

**STATE OF TENNESSEE  
COUNTY OF DAVIDSON**

JOHN H. POLK, being first duly sworn, makes oath that he accepted employment for the investigation of the Suggesters used by the United States District Court Clerk and the Jury Commissioner for the United States District Court, Middle District of Tennessee, undertaking to obtain information directly from said Suggesters as to the following matters:

1. Whether the Suggesters as a group, or any of them individually, had, after being asked to serve as Suggesters, taken any steps whatever to better acquaint themselves with the different groups and classes of persons eligible for jury service residing in their communities.

2. What steps, if any, had been taken by the Suggesters in an effort to comply with the request made by the Clerk and Jury Commissioner that members of a fair cross-section of their community be suggested for jury service.

*Motion to Dismiss—Exhibit G, Cont'd*

3. Whether any of the Suggesters residing in communities other than in Davidson County, Tennessee, had ever knowingly suggested a Negro, Catholic, Jew or manual laborer for Federal jury service.

4. What were the considerations entering into the Suggester's nomination of persons for Federal jury service.

5. Whether the Suggesters would admit being prejudiced against Negroes, Catholics, Jews or manual laborers.

That affiant has, as of the date this affidavit is made, interviewed five Suggesters. In an effort to obtain the cooperation of the Suggesters and their completely frank answers to the questions propounded, your affiant assured each of the persons interviewed that he did not intend to needlessly reveal their names, and that those for whom affiant was conducting the investigation would not subject the Suggesters interviewed to any subpoena for Court appearance not served on all other Suggesters.

That each Suggester interviewed stated to your affiant that no particular step had been taken in order that the Suggester might be better acquainted with his community and the various groups and classes of persons residing in that community. Each Suggester felt that he was, when appointed as a Suggester, sufficiently acquainted with his community to render the service requested. Each Suggester either frankly admitted, or admitted through evasion or otherwise, that he had some prejudice against Negroes, Catholics, Jews and manual laborers with the possible exception of a Suggester residing in Dickson County, Tennessee, who submitted the names of certain women who may have been of Catholic faith, not because they were of that faith but because they were wives of physicians and financially able to devote the time required for jury service. He knew that certain of the Doctors at the "hospital" and their wives were of Catholic faith, but



*Motion to Dismiss—Exhibit G, Cont'd*

stated he "relied heavily" on them as suggestions. One woman of Catholic faith he suggested because she had a "house full of children" and needed to get away for a rest and was able to afford domestic help to care for her children and do the other necessary things in her absence. Your affiant gathered the clear impression that he had not actually known this woman to be a Catholic until some time after his list had been submitted.

This same Suggester, who was interviewed at his place of business on September 3, 1963, between about 10:00 A.M. and 11:30 A.M., stated that he knew of no Negro, Catholic or Jew ever having worked there, but did not know, either, if any had ever been on the eligibility list. He said he would like to have a Negro employee because he could use one to advantage.

This Suggester went on to state that he had just sent in a list of suggestions recently and had included thereon a Catholic and a Negro as well as a member of the Communications Workers Union who worked for the telephone company.

One Suggester in Humphreys County, Tennessee, stated that he certainly had never returned the name of any Negro, that he wouldn't want to be tried by any damn Nigger and knew that no one else would want to be tried by a Nigger. This particular Suggester indicated that he had just shortly before been asked to again submit names and that on this occasion he had submitted the name of a Negro preacher because the preacher had told him that he wanted to do jury service. This may indicate a change in the procedures required of the Suggesters by the Clerk and Jury Commissioners. I gathered this impression from some of the other Suggesters interviewed.

While each of the counties in which the interviews were conducted contained a substantial Negro population, the Jewish and Catholic populations are relatively insignifi-



*Motion to Dismiss—Exhibit G, Cont'd*

cant. The admissions of prejudice as to these elements were therefore in the abstract and I cannot describe them as active prejudices, whereas the prejudice against the Negro is an active and recognized prejudice. The prejudice against the manual laborer is quite real, but the Suggester is only aware of this prejudice when questioned about details of his family and social life. It might be fair to say that the persons interviewed have but little occasion to mingle with manual laborers and their prejudice is more the result of lack of acquaintance, contact and understanding than it is any conscious feeling against that group.

An interview was had with one of the Suggesters serving Dickson County at his place of business at about 11:45 A.M., on September 3, 1963. I had explained fully to the Suggester my purpose in being there as well as having identified myself. However, as I asked the first question as to his church affiliation he replied that he was a Methodist. Then in obvious anger he said he was not going to answer questions. He stated he would not be able to serve as a juror trying James R. Hoffa because he had already made up his mind he was "as guilty as hell." He further stated, "I hope they hang that S.O.B. by the balls."

Another Suggester serving Dickson County was interviewed at his place of business between about 9:30 A.M. and 11:00 A.M., on September 4, 1963. Among other things he stated that the time of year and weather conditions had a lot to do with whom he suggested on his lists. In time of farming activities he would not send farmers; in good weather he would not send construction workers, builders or others who were dependent on that kind of weather in which to perform their work. He stated that he would not use the telephone book as a reference because he felt that he could make his suggestions from "people" not a book.

A few Suggesters stated that they did use the telephone book as a reference but only to refresh their memories

***Motion to Dismiss—Exhibit G, Cont'd***

as to persons whom they already knew and not for any other purpose.

In general, all Suggesters agreed that a prospective juror must be qualified and questioning brought out that by this they meant the basic qualifications only. After this was out of the way the reasons for making a suggestion ranged from economic need, chance to get a rest, ability to be away from home for extended periods of time with the least inconvenience, to retired persons or elderly persons, on the theory they weren't going to be doing much else anyway. One even used the term that he would pick some who could be away from home for an extended period of time without "hardship."

Further deponent sayeth not.

**JOHN H. POLK**

**SWORN TO AND SUBSCRIBED** Before me this 17th day of September, 1963.

**Notary Public**

**My Commission Expires:**  
**3-25-65.**

**EXHIBIT G, Continued**

**STATE OF TENNESSEE**  
**COUNTY OF DAVIDSON**

**ROBERT P. ZIEGLER, being first duly sworn, states:**

**That he is an attorney duly licensed and practicing law in Nashville, Tennessee, with offices in the Life and Casualty Tower. That he accepted employment for the investigation of persons serving as Suggesters and submitting names of prospective jurors to the United States District Court Clerk and Jury Commissioner. In accomplishing his**

*Motion to Dismiss—Exhibit G, Cont'd*

investigation, he personally interviewed nineteen (19) Suggesters in their respective home communities during the period September 8-14, 1963. That he made and has preserved notes of his interviews with each Suggester.

That the nineteen Suggesters interviewed stated, with four exceptions, that they had not taken it upon themselves to become more fully acquainted with their communities since undertaking to serve as Suggesters and that they had made no effort to better inform themselves of the social structure of their community in order to select a name from each recognizable element of the communities. One exception would be in the case of the Clerk and Master of Cheatham County who stated that she would ask various people, who would come into her office, to help her with this and to discuss suggested names with her. Another exception would be in the case of a Suggester from Montgomery County who discussed prospective names with his secretary. Another exception would be a Suggester in Steward County who stated that he discussed prospective names of people with his law partner and the final exception to the above statement would be the Postmaster of Sumner County who stated that he asked several people who worked in the Post Office with him for suggestions as to prospective names and discussed various people with them. That the Suggesters interviewed stated, with the above exceptions, that all of the names they submitted were taken from their own personal acquaintances. One Suggester from Robertson County stated "for example if I received a letter from the Clerk today, and when I opened it, I had ten minutes of spare time, I would then make a list of names and send it back to them."

That with one exception, no Suggester consulted or made use of any lists of residents of his community which might be expected to contain the names of a cross section of the members of the community. That no effort was made by

*Motion to Dismiss—Exhibit G, Cont'd*

any Suggester, with one exception, to obtain any list which would be representative of a cross section of the community without regard to race, religion, or financial status. That not one Suggester stated that he made use of the most readily available list, the local telephone directory for any purpose other than to recall names of persons known to him who might be qualified to serve as jurors. The exception to the above statements being one Suggester, the Clerk and Master of Houston County, who stated that she used the County tax records to recall family names. Several Suggesters stated that they did use the telephone directory to aid them in recalling names.

Every Suggester stated that to them, one of the major considerations in selecting prospective jurors was whether or not the individual could undertake jury service without being subjected to financial hardship. Several Suggesters stated that they did not send in the names of tenant farmers, blue collar workers, or other wage earners because of the financial suffering that would have to be endured by the family of these groups. These same Suggesters stated that this was a practical economical consideration and was not a question of any prejudice against these groups. A Suggester in Cheatham County stated that she looked for "a good person who was not working and who could afford to serve on the jury." A Suggester in Houston County stated that he only considered and selected retired or semi-retired people that could undertake the obligation of long jury service without financial hardship. A Suggester in Sumner County stated that he selected names of people that had the time to serve without hurting their business and people that would not be caused any financial hardship. Another Suggester in Sumner County stated that he looked for people who could take time off without hurting their business. Another Suggester in Sumner County stated that he tried to select names of people, who, he thought



*Motion to Dismiss—Exhibit G, Cont'd*

wanted to serve on the jury, and that were financially able to serve and that since this was a rural community, this considerably limited the number of available people. That every Suggester interviewed, with possibly two or three exceptions, gave evidence of prejudice against Negroes in one form or another. Several Suggesters refused to discuss this phase of the interview stating that their personal feelings had no bearing on the manner in which they performed this function. However, as was the case with one Suggester in Cheatham County, who refused to answer a question as to whether or not she included available qualified Negroes in her list, stated that "this doesn't concern you." In later conversation, it became apparent that the Suggester thought of Negroes as being "a bunch of drunkards and bootleggers" and as a group, Negroes prone to be law violators and trouble makers. One Suggester in Sumner County was of the opinion that Negroes were totally unqualified for anything except menial tasks, that they were totally untrustworthy, and under no circumstances would he consider putting one on a jury. Another Suggester from Sumner County stated that in his community it would be hard to find a Negro qualified to even find the Court-house. A Suggester from Houston County stated that she did not send in the names of any Negroes because "the Negroes in Houston County are poor, old, uneducated, incapable and incompetent." Another Suggester from Houston County stated that he just didn't think about including the names of any Negroes, and if he had thought of it he wouldn't have included them. A Suggester from Trousdale County stated that he never even considered putting Negroes on a list for jury duty. Another Suggester from Trousdale County stated that she didn't put the names of any Negroes on her list and didn't know any qualified Negroes that she could include.

Several Suggesters expressed a strong personal disap-



*Motion to Dismiss—Exhibit G, Cont'd*

proval as to the defendant Hoffa. A Suggester from Sumner County stated that "I have no use for Hoffa and I think they ought to hang him." A Suggester from Robertson County exhibited strong prejudice against the defendant Hoffa and made reference to the large amount of money being spent by the Defendant Hoffa in this matter. He ended the brief interview that he had granted with a remark to the effect that a lot of poor truck drivers were certainly paying a lot of money to get that man Hoffa off. Several Suggesters, after granting the time for an interview, upon finding out the purpose of the interview, became visibly upset and refused to cooperate. The Postmaster of Robertson County stated that he would simply not discuss this matter "but I have plenty of time for anything else of a public nature and will be happy to talk with you." One Suggester from Sumner County stated that "I have no use for Hoffa and will not even talk to you about him."

The interviews granted by two of the Suggesters were inconclusive due to the unwillingness of the Suggesters to cooperate. Several other Suggesters appeared apprehensive and guarded their conversation and answers carefully. One Suggester from Sumner County spoke in glowing terms of the way he performed his duties, stating that he was "a friend to all and shut his eyes when he made a list" but either refused to answer, or avoided any specific statement as to the actual comprehensiveness of his list of names as being representative of a broad cross section of the community. With the exception of the two above stated interviews all of the Suggesters interviewed were courteous and seemed willing to cooperate. Several Suggesters gave the distinct impression, by remarks they made to the interviewer, that this was merely a burdensome task that they had been assigned, and they treated it as such. None of the Suggesters interviewed, indicated that they gave any

**Motion to Dismiss—Exhibit G, Cont'd**

information to the Clerk or Jury Commissioner about the prospective jurors other than name and address.

Further affiant sayeth not.

/s/ ROBERT P. ZIEGLER.

Sworn to and subscribed before me this 21st day of September, 1963.

/s/ GAIL DOBBS,  
Notary Public

My commission expires: February 6, 1967.

**EXHIBIT H**

**NEWSPAPER PUBLICITY AS DESIGNATED  
IN CHRONOLOGICAL ORDER**

**Nashville Banner—Nov. 20, 1964**

**Page 1, Double Heading**

**NEW ATTEMPT TO CONTACT PROSPECTIVE  
JUROR FOR HOFFA CASE IS REPORTED**

**EXTRA**

(Copyright, 1963, by The Nashville Banner)

By CRAIG ELLIS and BRAD CARLISLE

An attempt to approach at least one prospective juror in the upcoming trial of Teamsters President James R. Hoffa and six co-defendants on jury-tampering charges has created a furor among federal authorities here and set off a chain of super-secret conferences stretching from Nashville to Washington.

*Motion to Dismiss—Exhibit G, Concluded*

The approach was made late last week and additional United States marshals were rushed to Nashville to provide around-the-clock surveillance on one man—a law enforcement officer—and his family.

The added marshals bolstered the local staff of government agents who already were guarding other persons on a full-time basis.

Within hours after the prospective juror was contacted in connection with the jury-tampering case, both U.S. District Judge William E. Miller and U.S. District Judge Frank Gray Jr. were notified by government agents.

Miller and Gray talked with government authorities Friday and Friday evening and also conferred with each other on more than one occasion.

Government agents also talked with Justice Department attorneys in Washington on Friday, Saturday, Monday and Tuesday.

THE NASHVILLE BANNER learned the conferences involved the summoning into session of the special federal grand jury which indicted Hoffa and the others. It was believed, however, that it was decided not to call the jurors into session immediately.

From a reliable source THE BANNER was informed the prospective juror was approached by a "middle man" after the latter was contacted by a man closely aligned with the union leader.

THE BANNER learned action is imminent in the latest attempt to approach a prospective juror.

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*Motion—Publicity—Exhibit H, Cont'd*

**The Nashville Tennessean—Nov. 21, 1964**  
**(Page 1, Double Heading)**

**Z. T. OSBORN JR. DISBARRED FOR HOFFA  
CASE BRIBE TRY**

**\$10,000 Proposal Charged**

**U.S. Judges Say Attorney 'Guilty' of Criminal,  
Professional Violations; Jury Probe Possible**

By NELLIE KENYON

Z. T. Osborn Jr., Nashville attorney for Teamsters President James R. Hoffa, was disbarred from practicing law in federal court yesterday after the court found him guilty of trying to bribe a prospective juror in Hoffa's forthcoming trial on jury-tampering charges.

The court accused Osborn of offering to provide the possible juror with \$5,000 if he were selected to sit on the jury to try Hoffa next Jan. 6 and an additional \$5,000 if the case ended in a hung jury.

Federal District Judge William E. Miller said Osborn "is guilty of criminal and professional violations and misconduct of such character and gravity as to clearly indicate a moral unfitness to engage in the practice of law in this court."

The key piece of evidence on which the court acted was a taped recording of a conversation between Osborn and Robert D. Vick, a metro patrolman who the court found Osborn sought to use as the go-between with the prospective juror. In that conversation Osborn instructed Vick to tell the possible juror that "... there will be at least two others with him."

Both Miller and federal Judge Frank Gray Jr. signed an order yesterday afternoon disbaring Osborn from practice



*Motion—Publicity—Exhibit H, Cont'd*

in their courts. The effect of the order is to bar him from the practice of law in any federal court.

They also directed the clerk of the court to make copies of the proceedings available to any courts, bar associations or agencies requesting them.

Osborn, the court disclosed yesterday, was given a hearing before the judges Tuesday and admitted a discussion about attempting to influence a possible juror. Four days earlier (on Nov. 15) he had denied such a discussion in a conference with them, the judges stated.

The disbarment proceedings raised the possibility of a jury investigation to determine if there were any violations of criminal laws. But neither the court nor the Justice Department had any immediate comment.

The target of the bribery attempt was identified as Ralph M. Elliott of Springfield, a prospective juror and a member of the panel of jurors in Gray's court at present.

The opinion continued:

"He thereupon made a statement about the Elliott matter, admitting conversations with Robert D. Vick on Nov. 8, 1963, and Nov. 11, 1963, and discussing with him an attempt to improperly influence the juror by the use of money but with the explanation, in substance, that the idea of attempting to reach this particular juror originated in the mind of Vick and not in the respondent's mind . . ."

Osborn contended at the hearing that he had not consciously decided that he would actually go through with the bribe attempt. Miller, however, dismissed Osborn's contention as not sustained by the facts.

Judge Miller noted that Osborn "made untruthful statements to the court and gave false answers to questions which were propounded to him" on Nov. 15, and further that Osborn's statements and testimony on Nov. 19 "to the effect that the idea of attempting to influence a prospective juror in the forthcoming Hoffa case originated in the mind



*Motion—Publicity—Exhibit H, Cont'd*

of Robert D. Vick and not in respondent's mind, and that Vick was the 'aggressor' in the matter and not respondent, were false and untruthful and known to be such by the respondent at the time, a fact which clearly appears not only from the affidavits and statements of Robert D. Vick, but also from the admittedly correct transcript of the actual conversation between Vick and respondent on Nov. 11."

Miller also said that whether Vick or Osborn originated the idea of bribing a juror with \$10,000 was immaterial. He said the conversation did take place and Osborn made no effort to cancel the agreement.

. . . . .

*The Nashville Tennessean—Nov. 21, 1964*

**COURT 'CONVINCED' ATTORNEY GUILTY**

*This is the complete text of Judge William E. Miller's memorandum in the disbarment proceeding against Z. T. Osborn Jr., Nashville attorney.*

In this matter information was brought to the attention of the Court on various dates, beginning Nov. 7, 1963, that Z. T. Osborn Jr., a member of the Bar of this Court and representing the defendant, James R. Hoffa, in connection with a pending indictment against him in this court involving charges of jury tampering, was engaging in an attempt to bribe and otherwise improperly influence one Ralph A. Elliott, a member of the petit jury panel sworn on October 14, 1963, and a prospective juror in the forthcoming trial of the said criminal action, being Criminal Action No. 13,383, and styled United States v. Hoffa, et al.

Such information was carefully weighed and considered, and the Court, being of the opinion that it was of a substantial character and gravely reflected upon a member of

*Motion—Publicity—Exhibit H, Cont'd*

the Bar and an officer of the Court, determined that the attorney involved should be called before the Court at chambers and afforded the opportunity to make any statement he cared to make. Accordingly, on November 15, 1963, the said attorney Z. T. Osborn, Jr. (hereinafter referred to in this memorandum as respondent) was called and requested to appear before the Court at chambers, which he did.

*Informed of Charge*

At that time he was advised that information had come to the attention of the Court of a substantial nature indicating that efforts were being made to improperly influence members of the jury panels duly selected and sworn and from which a jury would be qualified and chosen as the trial jury in the forthcoming Hoffa jury tampering case; and further that such information indicated that the respondent himself was personally implicated.

Respondent was further advised that he was not required to make a statement concerning the charges, that any statement he made might be used against him, and that he had the right to be represented by an attorney.

The respondent stated that he was fully aware of his rights in this connection and that he would be willing to make a statement and to answer any question propounded by the Court.

Thereupon, the Court asked the respondent if he was aware of any plan to improperly influence any of the prospective jurors. He replied in the negative. He was also asked if he himself had made any attempts or engaged in any conversation with any person for the purpose of improperly influencing any prospective member of the jury in the forthcoming Hoffa trial. This question was answered in the negative.

*Motion—Publicity—Exhibit H, Cont'd*

*Asked About Elliott*

He was then asked to state whether he had engaged in any conversation for the purpose of making an effort to improperly influence a prospective member of the jury who had been selected on one of the jury panels by the name Elliott. The respondent also answered this question in the negative.

He was then advised that the Court intended to conduct a hearing for the purpose of determining whether the charges involving the respondent were true, and if so, whether disciplinary action, should be taken against him, including striking his name from the roll of attorneys and disbarred from practicing in this court.

He was advised that the Court would be willing to conduct the hearing at chambers rather than in open court in order to minimize the embarrassment to the respondent in the event it should be found that the charges were not well founded. The respondent stated that he desired to have the hearing conducted at chambers.

*Served With Order*

Thereupon, he was served with a show cause order, the original of which appears in the appendix hereto. The order recites the receipt of information by the Court that the respondent during the month of November 1963 did attempt to improperly influence one Ralph A. Elliott, a prospective juror in the Hoffa case, and ordered the respondent to appear before the Court at 9:00 o'clock a.m. on the 25th day of November 1963, and show cause why his name should not be stricken from the roll of attorneys and be disbarred and prohibited from practicing in this court.

On the following day, November 16, 1963, the respondent again appeared before the court at chambers with the request that he be furnished information as to the basis for the show cause order that the court had entered on the

*Motion—Publicity—Exhibit H, Cont'd*

previous day. He was thereupon advised by the court as follows:

“JUDGE GRAY: All right. Now, let me give you—Let me say first, that I have talked with Judge Miller who is out of town and we concur in what I am now doing.

“On Friday, November 8, 1963, Judge Miller and I individually were presented with an affidavit by Robert D. Vick in which he made statements as to a conversation which he had had with you in which the name of Juror Ralph A. Elliott was mentioned.

“And according to the affidavit, you had instructed him to contact him, after he said that he knew him and was kin to him, and to get him on your side.

“MR. NORMAN: Mr. Vick is kin to Mr. Elliott?

“JUDGE GRAY: That's the statement here, yes.

“On the basis of that affidavit, Judge Miller and I individually—

“I was out of the office at the time it first came up, and got here half an hour later.

“We individually—and I suppose concurrently—authorized further investigation of the matter including, specifically, an authorization for the Department of Justice to send Robert D. Vick back to talk with you equipped with a tape recorder.

“Since that time, we have been furnished with affidavits from Robert D. Vick as to a conversation with you on November 8, 1963, and a further conversation with you on Monday, November 11, 1963. We have also been furnished with a transcript of a tape recording which purports to be a conversation between you and Mr. Vick in your office on Monday, November 11. We have also listened to the tape recording itself.

“In the affidavits furnished us and in the tape recording, someone (and according to the affidavit, you) authorized



*Motion—Publicity—Exhibit H, Cont'd*

Mr. Vick to make an improper contact with juror Ralph A. Elliott.

“Now, that was the basis for the show cause order as we had it at that time.”

*Requests Statement*

On November 19, 1963, the respondent notified the Court that he would like to appear immediately before the Court to make a statement. This request was granted and the respondent duly appeared before the Court at chambers on that date.

He was again advised that any statement he made would have to be voluntary on his part and with the understanding that no promises of any kind had been made to him for the purpose of inducing a statement on his part.

He replied that he fully understood that there had been no promises or commitments of any kind by any person. He further stated “I am asking, you honor, to permit me to make this statement.”

“He further stated that he would like to have the hearing on the show cause order conducted on that date, November 19, 1963, in lieu of the hearing which had previously been set for November 25, 1963. He thereupon made a statement about the Elliott matter, admitting conversations with Robert D. Vick on November 8, 1963, and November 11, 1963, and discussing with him an attempt to improperly influence the juror by the use of money but with the explanation, in substance, that the idea of attempting to reach this particular juror originated in the mind of Vick and not in respondent's mind. The statement by the respondent will be more fully commented upon hereinafter.

*Record Is Cited*

At the conclusion of the statement, the Court made a part of the record the various affidavits and statements of Robert D. Vick which had been supplied to the Court, consisting of

*Motion—Publicity—Exhibit H, Cont'd*

his affidavit of November 8, 1963, (Exhibit A); a statement of November 8, 1963, (Exhibit B); his statement of November 11, 1963, (Exhibit C); a transcript of Vick's statement made to Attorney John J. Hooker, Sr., November 15, 1963, (Exhibit E).

The respondent was afforded an opportunity to read and examine such statement and affidavits and, in addition, he was specifically accorded the opportunity to examine or cross-examine the said Robert D. Vick in the presence of the Court, the said Vick having been made available at that time, but the respondent stated that he did not care to have him called as a witness or to ask him any questions.

He further stated that he had no objection for the Court in a proceeding of this kind to consider such statements and affidavits.

Also made a part of the record in the proceeding, as Exhibit D, was the transcript of the tape recording of the conversation between the said Vick and respondent on November 11, 19663 in respondent's office concerning the attempt to improperly influence the juror Elliott.

*Tape Played Back*

The tape recording was played back and listened to by the respondent and by the Court, with the respondent at the same time following the recording with the transcript filed as Exhibit D. Thereafter, the respondent admitted that he could hear the recording and that the transcript filed as Exhibit D represented what he heard and represented the the conversation which had taken place between him and Vick on November 11, 1963.

Also made a part of the record were affidavits of William L. Sheets (Exhibit F); Edward T. Steele (Exhibit K); and Charles F. Grigsby (Exhibit L), all of whom are Special Agents of the Federal Bureau of Investigation.

These affidavits covered their surveillances of Vick on

*Motion—Publicity—Exhibit H, Cont'd*

November 8 and November 11, 1963, when he entered and left respondent's office. In addition, Special Agents Sheets and Steele were personally called as witnesses and verified the contents of their respective affidavits.

The chronology of Vick's activities as observed by these agents is set forth in Exhibit G, and exhibit which was duly verified by the testimony of the Special Agents Sheets and Steele. The respondent stated that he did not care to cross-examine the special agents.

*Tapes Added to Record*

The tape recordings were also made a part of the record, including the original tape recordings and the filtered and unfiltered copies. In addition, the transcript of the first hearing of November 15, 1963, was made a part of the record as Exhibit M.

The various statements and affidavits of Vick, the affidavits of FBI agents, the chronology sheet, and the transcript of the hearing of November 15, 1963, are attached as an appendix hereto.

After the foregoing evidence was placed in the record, the respondent was asked if he wanted to call any witnesses or to present any matter in his own behalf other than his own statement. He was advised that the Court was ready and willing to hear and consider and to make a part of the record any evidence which he cared to offer, or any statement of any person whomsoever which might be made in his behalf. He replied that he had nothing to present to the Court other than his own statements and answers to questions.

Based upon the evidence presented at the hearing, including the statements and answers made by the respondent, and a careful observation of his manner and demeanor at the time his various statements and answers were made

*Motion—Publicity—Exhibit H, Cont'd*

and given, the following findings and conclusions appear to the Court to be conclusively and inescapably established:

1. That the respondent engaged in a conversation on November 8, 1963, and in a conversation on November 11, 1963, with Robert D. Vick, a member of the Nashville Metropolitan police force, for the purpose and with the intent to improperly influence a prospective juror by the name of Ralph A. Elliott, who had been duly selected and sworn as a member of one of the petit jury panels of this court on October 14, 1963, for possible service on the jury in the forthcoming trial of United States vs. Hoffa, et al., Criminal Action No. 13,383.

2. That in these conversations the respondent requested the said Robert D. Vick to contact the said juror, who was represented by Vick to be his cousin, and to make a deal with him for the payment to the said juror of the sum of \$5,000.00 at the time he was selected on the jury to try the said case, if he was so selected, and for the payment to the said juror of an additional \$5,000.00 at the conclusion of the trial of the said case if it resulted in a hung jury.

3. That it was the plan, purpose and intent of the respondent at the time of said conversations to have the money supplied to make the said payments to the said juror on the conditions stated.

4. That the respondent when he appeared before the court on November 15, 1963, made untruthful statements to the Court and gave false answers to questions which were propounded to him. His statements and answers on that occasion to the effect that he knew of no plan to improperly influence the jury in the forthcoming Hoffa trial, and that he had engaged in no conversation with any person for the purpose of improperly influencing any prospective juror in the said case, specifically juror Ralph A.



*Motion—Publicity—Exhibit H, Cont'd*

Elliott, were false and untruthful and were known to be such by respondent.

5. That the respondent's statements and testimony before the Court on November 19, 1963 to the effect that the idea of attempting to influence a prospective juror in the forthcoming Hoffa case originated in the mind of Robert D. Vick and not in the respondent's mind, and that Vick was the "aggressor" in the matter and not respondent, were false and untruthful and known to be such by the respondent at the time, a fact which clearly appears not only from the affidavits and statements of Robert D. Vick, but also from the admittedly correct transcript of the actual conversation between Vick and the respondent on November 11, 1963.

6. That the respondent's statement before the Court on November 19, 1963 to the effect that he had not formed an intent to carry through on the "deal" he discussed with Vick on November 11, 1963, was a false and untruthful statement and known to be such by respondent at the time it was given. That such statement was false is clearly shown by the conversation between Vick and respondent on November 11, 1963. The respondent's guilty intent and knowledge are clearly disclosed not only by the content and substance of said conversation but also by the fact that the recording makes it clear to the Court that the respondent talked in hushed and whispered tones.

7. That the statements and answers made and given by the respondent on November 19, 1963, are wholly unsatisfactory and untrue, being in all essential respects inconsistent with the admittedly correct reproduction of the conversation which took place between the respondent and Vick on November 11, 1963.

8. From the entire record, including the statements and

*Motion—Publicity—Exhibit H, Cont'd*

answers of the respondent, and his manner, demeanor and reactions which were personally observed by the Court at the time such statements and answers were given, the Court is convinced, and so finds, that the respondent is guilty of on attempt to improperly influence the juror Elliott by conversations with Robert D. Vick on November 7, 1963, November 8, 1963, and November 11, 1963.

9. From the entire record, including the answers and statement given by the respondent, the Court is of the opinion, and so finds, that the respondent has not only made untruthful, incorrect and inconsistent statements to the court in connection with the Elliott incident, but also that he has failed and refused to give to the Court a full, frank and complete disclosure of knowledge which he possesses concerning efforts to improperly influence other prospective jurors in the forthcoming trial of United States of America v. James R. Hoffa, et al., Criminal No. 13,383. This is borne out by respondent's statement to Vick in the November 11th conversation that he should assure Elliott 100% that he would not be alone and that "there will be at least two others with him."

10. That the respondent is guilty of criminal and professional violations and misconduct of such character and gravity as to clearly indicate a moral unfitness to engage in the practice of law in this court.

11. That the respondent, in the respects indicated herein, has been and is guilty of serious and reprehensible violations of his duty as an officer of the court, and that he is no longer entitled to the privilege of appearing in this court as an attorney.

*Experience Highlighted*

There are a number of considerations which aggravate the offense, or defenses, committed by the respondent in

*Motion—Publicity—Exhibit H, Cont'd*

his dereliction of duty as a member of the Bar and as an officer of the court.

The respondent is generally recognized as an intelligent and able trial attorney of wide experience both in the trial and appellate courts. He has had extensive experience in the practice of law in the federal court.

His experience includes service as City Attorney of Nashville and as Assistant United States Attorney for the Middle District of Tennessee.

There can be no question of his awareness of his obligations and duties as an officer of the court and of the seriousness of an attempt on the part of a lawyer to improperly influence a juror or to commit any act for the purpose of thwarting, interfering with, or contaminating the processes of the court.

It is most significant that the respondent was one of the attorneys representing James R. Hoffa in the case of United States of America vs. James R. Hoffa and Commercial Carriers, Inc., Criminal Action No. 13,241, which was tried in this court approximately a year ago over a nine week's period of time, resulting in a mistrial because the jury was unable to agree on a verdict.

*Forced Interpurtion*

From the beginning of this trial, and throughout its course, the Court was confronted with information indicating that attempts were being made to reach and improperly influence prospective members and actual members of the trial jury. This information made it necessary for the Court to interrupt the trial of the case in order to hold closed-door sessions of court to determine, first, whether a prospective juror, and later, whether two members of the trial jury had been improperly influenced.

The information and the evidence presented at the closed-door sessions caused the Court to excuse two of the mem-

*Motion—Publicity—Exhibit H, Cont'd*

bers of the jury selected to try the case and, in addition, one of the prospective jurors.

The respondent was presented at all these sessions and heard the testimony of the witnesses and the rulings of the court. He was also familiar with the fact that one or more of the prospective jurors had reported that someone had called them on the telephone, representing himself to be a person by the name of "Allen" and a reported for the Nashville Banner, and making inquiries of the jurors as to what they would do if selected to try the Hoffa case.

*Heard Court Statements*

The respondent was also present in court and heard the statement made by the Court at the conclusion of the Hoffa trial reciting the various jury tampering incidents which had occurred before and during the trial, stating that stern measures were necessary to protect the jury system and the court as an institution of government, and calling for the immediate convening of a special grand jury to investigate all jury tampering incidents in connection with the trial, and to return indictments against any person, or persons, against whom sufficient evidence was presented.

The respondent was also aware of the fact that the court, in one of the closed-door sessions in the case, made the statement that, up to that time, no evidence had been presented implicating any attorney in jury tampering efforts and stating in substance that the Court was very thankful that this was a problem with which the Court had not been confronted.

The respondent was also familiar with the fact that the grand jury, after extensive investigations and prolonged hearings, returned indictments growing out of the prior Hoffa case of a year ago in four different cases, involving eleven different defendants against whom various charges of jury tampering, or attempted jury tampering, were made.



*Motion—Publicity—Exhibit H, Cont'd*

*Attorney of Record*

The respondent himself was employed in one of these criminal actions, *United States of America v. James R. Hoffa*, Criminal No. 13,383, to represent the defendant Hoffa, and he was an attorney of record in said case at the time he engaged in the conversations with Vick relative to the juror Elliott.

That the respondent, in the light of this immediate history and in this context and atmosphere, did himself engage in a brazen attempt to bribe and improperly influence a prospective juror is an indication of such a callous and shameful disregard of duty, such a lack of moral fitness and sense of professional ethics, as to warrant no lesser punishment than the removal of his name from the roll of attorneys permitted to practice law in this court.

The principles which must govern the court in its determination of this matter are well settled and universally accepted.

*Canons of Ethics*

The Preamble to the Canons of Professional Ethics of the American Bar Association states:

“In America, where the stability of Courts and of all departments of government rests upon the approval of the people, it is peculiarly essential that the system for establishing and dispensing Justice be developed to a high point of efficiency and so maintained that the public shall have absolute confidence in the integrity and impartiality of its administration.

The future of the Republic, to a great extent, depends upon our maintenance of Justice pure and unsullied.

“It cannot be so maintained unless the conduct and the motives of the members of our profession are such as to merit the approval of all just men.”

*Motion—Publicity—Exhibit H, Cont'd*

Cannon 15 states in part:

“Nothing operates more certainly to create or to foster popular prejudice against lawyers as a class, and to deprive the profession of that full measure of public esteem and confidence which belongs to the proper discharge of its duties than does the false claim, often set up by the unscrupulous in defense of questionable transactions, that it is the duty of the lawyer to do whatever may enable him to succeed in winning his client's cause.

“The lawyer owes ‘entire devotion to the interest of the client, warm zeal in the maintenance and defense of his rights and the exertion of his utmost learning and ability.’ to the end that nothing be taken or be withheld from him, save by the rules of law, legally applied. No fear of judicial disfavor or public unpopularity should restrain him from the full discharge of his duty.

“In the judicial forum the client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land, and he may expect his lawyer to assert every such remedy or defense. But it is steadfastly to be borne in mind that the great trust of the lawyer is to be performed within and not without the bounds of the law...”

Canon 32 reads in part as follows:

“No client, corporate or individual, however powerful, nor any cause, civil or political, however important, is entitled to receive nor should any lawyer render any service or advice involving disloyalty to the law whose ministers we are, or disrespect of the judicial office, which we are bound to uphold, or corruption of any person or persons exercising a public office or private trust, or deception or betrayal of the public.

“When rendering any such improper service of advice, the lawyer invites and merits stern and just condemnation.

“Correspondingly, he advances the honor of his profes-

*Motion—Publicity—Exhibit H, Cont'd*

sion and the best interests of his client when he renders service or gives advice tending to impress upon the client and his undertaking exact complicity with the strictest principles of moral law . . .”

Canon 33 reads in part as follows:

“... A lawyer must never converse privately with jurors about the case; and both before and during the trial he should avoid communicating with them, even as to matters foreign to the cause.”

Turning to a few selected cases, we find these general principles clearly expressed by the court. In *re Keenan*, 192 N.E. 65, 96 A.L.R. 679, 682 (Mass. 1934), the Supreme Court of Massachusetts made the following statement in a disbarment case involving an attorney charged with bribing jurors:

“The primary purpose of such a (disbarment) proceeding is the preservation of the purity of the courts and the protection of the public from attorneys who disregard their oath of office and have been proved unworthy of trust.

“An attorney is not merely practicing a profession for personal gain; he is an officer of the court. By virtue of its inherent power to control the conduct of its affairs, to maintain its dignity and to enable itself to do justice the court has a summary jurisdiction to inquire into the conduct of its officers and to deal with an attorney found to have committed any evil practice contrary to justice and honesty.”

*Another Case Cited*

The Court of Appeals of New York, in *People ex rel. Karlin v. Culkin*, 248 N.Y. 465, 162 N.E. 487, 60 A.L.R. 851, 855 (1928), opinion by Chief Justice Cardozo, made the following statement concerning the obligations of an attorney as an officer of the court:

“‘Membership in the bar is a privilege burdened with conditions.’ *Re Rouss*, *supra*, 221 N.Y. page 84, 116 N.E.

*Motion—Publicity—Exhibit H, Cont'd*

783. The appellant was received into that ancient fellowship for something more than private gain. He became an officer of the court, and, like the court itself, an instrument or agency to advance the ends of justice. His co-operation with the court was due, whenever justice would be imperiled if co-operation was withheld. . . . He might be censured, suspended, or disbarred for 'any conduct prejudicial to the administration of justice.' "

A clear statement of the obligations and duties of an attorney were set forth in the opinion of the Supreme Court of Wisconsin in *Langen v. Borkowski*, 206 N.W. 181, 43 A.L.R. 622, 636 (1925):

"An attorney at law is an officer of the court. The nature of his obligations is both public and private. His public duty consists in his obligation to aid the administration of justice; his private duty, to faithfully, honestly, and conscientiously represent the interests of his client. In every case that comes to him in his professional capacity, he must determine wherein lies his obligation to the public and his obligation to his client, and to discharge this duty properly requires the exercise of a keen discrimination, and wherever the duties to his client conflict with those he owes to the public as an officer of the court in the administration of justice, the former must yield to the latter. He therefore occupies what may be termed a quasi judicial office."

Not only is the respondent's attempted explanation of the Elliott matter factually unsupported and unbelievable but on the basis of the principles set forth above indicating the high professional standards required of an attorney, the explanation, even if accepted in the light most favorable to the respondent, would avail him nothing.

Apparently the respondent is attempting to convince the Court, or to leave the impression, that he was in some way entrapped by Robert D. Vick into committing an offense,



*Motion—Publicity—Exhibit H, Cont'd*

and that except for the suggestion and persuasion of Vick he would not have been involved.

The stubborn fact remains from the undisputed proof, and the respondent admits, that he engaged in a conversation with Vick concerning an effort to improperly reach and influence the juror Elliott by the use of money in the total amount of \$10,000.000.

Whether the idea originated with Vick or with respondent, or whether one or the other was the instigator or "aggressor" in the transaction is wholly immaterial and beside the point. The conversation did take place and Vick did leave the respondent's office with respondent's understanding that an effort would be made to contact and influence this particular juror.

The respondent had no way of knowing that the contract would not be made at any time. He did nothing to cancel the arrangement made with Vick, although he had four days' time to do so between the time that Vick last left his office on November 11th, and the time that the respondent was first called before the Court on November 15th.

It was the manifest duty of the respondent as an officer of the Court to report immediately to the Court any knowledge concerning an unlawful or improper suggestion, effort or attempt by any person whomsoever to reach any juror or to corrupt the processes of the court.

In the discharge of this high duty and responsibility the respondent admittedly failed, and the result as far as disciplinary action is concerned is the same whatever interpretation is placed upon respondent's statements to the Court in an attempt to explain his connection with the Elliott incident.

The Court desires to state affirmatively for the record that the juror Elliott is altogether blameless in this matter, inasmuch as the proof clearly indicates that he was never contacted in any way by Vick and that the case was never

*Motion—Publicity—Exhibit H, Cont'd*

discussed with him. This statement is made in order that no implication of any nature will arise insofar as this particular juror is concerned.

In keeping with this memorandum an order has this day been signed and approved and passed to the Clerk striking the respondent's name from the rolls and directing that copies of the order and memoranda of the Court be furnished to any court, bar association or other agency requesting the same.

Signed: William E. Miller,  
United States District Judge

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***The Nashville Tennessean—Nov. 21, 1963***

*This is the memorandum of Judge Frank Gray, Jr., in the disbarment proceedings against Nashville Attorney Z. T. Osborn, Jr., in the U.S. District Court for Middle Tennessee:*

**MEMORANDUM**

On the basis of information presented to me on November 8, 1963, I joined Chief Judge William E. Miller in authorizing agents of the Federal Bureau of Investigation to proceed with an investigation of Mr. Z. T. Osborn, Jr., a member of the bar of this court.

This authorization specifically included the use of a sealed and concealed recording device strapped to the body of an informer under limited circumstances to record the informer's conversations with Mr. Osborn.

Pursuant to and within the limits of this authorization, the agents developed certain evidence, which was presented to us. On the basis of this evidence, Mr. Osborn was called into a conference in Judge Miller's chambers on November 15, 1963, both judges being present with a court reporter.

*Motion—Publicity—Exhibit H, Cont'd*

Mr. Osborn was informed of the existence of substantial evidence indicating that he was implicated in an effort to influence a particular prospective juror in the case of United States of America v. James R. Hoffa, et al., Criminal Case No. 13,383, in which he was counsel of record for the defendant Hoffa. After being reminded of his right to keep silent and to consult counsel, Mr. Osborn specifically waived these rights and denied knowledge of any effort or plan to influence any juror.

The court thereupon presented him with a copy of an order to show cause why his name should not be stricken from the roll of members of the bar of the court, returnable November 25, 1963. At his request the matter was scheduled for hearing in chambers. The original of the show cause order was sealed and filed with the clerk Monday, November 18, 1963.

On November 16, 1963, Mr. Osborn, at his request, appeared before me in chambers with counsel and requested further particulars of the charges against him. In the presence of his counsel and with a court reporter present, I informed him more particularly of the nature and purport of the evidence available to the court at that time.

On November 19, 1963, a hearing was held by Judge Miller in chambers and I have read a transcript of this hearing. It appears that respondent appeared before Judge Miller at his own request, a court reporter being present. Upon respondent's indication that it was his desire that this conference be treated as the hearing upon the order to show cause, the evidence against him was introduced into the record, all witnesses against him were tendered for cross examination, and he was given full opportunity to present any witnesses in his favor.

He declined to present any evidence other than his own statement, which he affirmed under oath.

I have carefully studied and considered all of the evi-

*Motion—Publicity—Exhibit H, Cont'd*

dence, including respondent's own statements. It is my opinion that the evidence in the record shows clearly that respondent has been guilty of such improper conduct as to require the decision that his name be stricken from the roll of the members of the bar of this court.

Signed: Frank Gray, Jr.  
United States District Judge.

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*The Nashville Tennessean—Nov. 21, 1963*

**'TWO OTHERS WITH HIM . . .'**

*Here is the text of Exhibit D, the transcript of a tape recording of contact between Z. T. Osborn, Jr., Nashville attorney, and Robert D. Vick on November 11, 1963, in Osborn's office at 218 Third Ave., N.:*

. . . . .

(Traffic noise. Door opens and closes.)

VICK: "Good morning. How're you this morning?"

GIRL: Good morning.

VICK: Is TOMMY here?

GIRL: There's somebody with him.

VICK: O.K. You know how long he'll be?

GIRL: No, I think it's JOHN POLK.

VICK: JOHN POLK? You don't, he didn't say how long he'd be?

GIRL: No. He's been in there about 10 minutes.

VICK: About 10 minutes? Well, I'll wait a minute.

(Sound of typewriter).

VICK: You still on your diet, honey?

GIRL: Yes.

VICK: Does it get harder every day or easier?

MAN: Hi Bob.



*Motion—Publicity—Exhibit H, Cont'd*

VICK: Hi Stan. How're you doing? Looks like you got an armload of work.

STAN: No, DELORES has got it.

VICK: Well, pardon me there DELORES.

Typewriter noise).

VICK: Hi Rosemary.

GIRL: Hi Bob.

(Man heard to give correction to stenographer changing word herein to wherein).

GIRL: You can go in now.

VICK: O.K., honey. Hello, Mr. OSBORN.

OSBORN: Hello Bob, close the door, my friend, and let's see what's up.

VICK: How're you doing?

OSBORN: No good. How're you doing?

VICK: Oh, pretty good. You want to talk in here?

OSBORN: How far did you go?

VICK: Well, pretty far.

OSBORN: Maybe we'd better . . .

VICK: Whatever you say. Don't make any difference to me.

OSBORN: (Inaudible whisper).

VICK: I'm comfortable, but er, this chair sits good, but we'll take off if you want to, but

OSBORN: Did you talk to him?

VICK: Huh?

OSBORN: Did you talk to him?

VICK: Yeah, I went down to Springfield Saturday morning.

OSBORN: Elliott?

VICK: Elliott.

OSBORN: (Inaudible whisper).

VICK: Huh?

OSBORN: Is there any chance in the world that he would report you?

*Motion—Publicity—Exhibit H, Cont'd*

VICK: That he will report me to the FBI? Why of course, there's always a chance, but I wouldn't got into it if I thought it was very, very great.

OSBORN: (Laughed).

VICK: You understand that.

OSBORN: (Laughing). Yeah, I do know. Old Bob first.

VICK: That's right. Don't worry. I'm gonna take care of old Bob and I know, and of course I'm depending on you to take care of Old Bob if anything, if anything goes wrong.

OSBORN: I am. I am. Why certainly.

VICK: Er, we had coffee Saturday morning and now I had previously told you that it's the son.

OSBORN: It is?

VICK: Yes, and not the father.

OSBORN: That's right. —

VICK: The son is RALPH ALDEN ELLIOTT and the father is RALPH DONNAL. ALDEN is er—MARIE, that's RALPH's wife who killed herself. That was her maiden name, ALDEN, see? Anyway, we had coffee and he's been on a hung jury up here this week, see?

(Editor's note: Federal court made it clear Wednesday that Vick had never, in fact, contacted Elliott concerning the bribery attempt).

OSBORN: I know that.—

VICK: Well, I didn't know that but anyway, he brought that up so he got to talking about the last HOFFA case being hung, you know, and some guy refusing \$10,000 to hang it, see, and he said the guy was crazy, he should've took it, you know, and so we talked about and so just discreetly, you know, and course I'm really playing this thing slow, hat's the reason I asked you if you wanted a lawyer own there to handle it or you wanted me to handle it, cause I'm gonna play it easy.

OSBORN: The less people, the better.

VICK: That's right. Well, I'm gonna play it slow and

*Motion—Publicity—Exhibit H, Cont'd*

easy myself and er ,anyway, we talked about five thousand now and five thousand later, see, so he did, he brought up five thousand see, and talking about how they pay it off you know and things like that. I don't know whether he suspected why I was there or not cause I don't just drop out of the blue to visit him socially, you know. We're friends, close ,and kin, cousins, but I don't ordinarily just, we don't fraternize, you know, and er, so he seemed very receptive for er, to hang the thing for five now and five later. Now, er, I thought I would report back to you and see what you say.

OSBORN: That's fine. The thing to do is set it up for a point later so you won't be running back and forth.

VICK: Yeah.

OSBORN: Then tell him it's a deal.

VICK: It's what?

OSBORN: That it's a deal. What we'll have to do when it gets down to the trial date, when we know the date, tomorrow for example if the Supreme Court rules against us, well within a week we'll know when the trial comes. Then he has to be certain that when he gets on, he's got to know that he'll just be talking to you and nobody else.

VICK: Social strictly.

OSBORN: Oh yeah.

VICK: I've got my story all fixed on that.

OSBORN: Then he will have to know where to, he will have to know where to come.

VICK: Well er . . .

OSBORN: And, he'll have to know when.

VICK: Er, do you want to see him yourself? You want me to handle it or what?

OSBORN: Un huh. You're gonna handle it yourself.

VICK: All right. You want to know it when he's ready, when I think he's ready for the five thousand. Is hat right?

*Motion—Publicity—Exhibit H, Cont'd*

OSBORN: Well no, when he gets on the panel, once he gets on the jury. Provided he gets on the panel.

VICK: Yeah. Oh yeah. That's right. That's right. Well, now, he's on the number one.

OSBORN: I know, but now . . .

VICK: But you don't know that would be the one.

OSBORN: Well I know this, that if we go to trial before that jury he'll be on it but suppose the government challenges him over being on another hung jury.

VICK: Oh, I see.

OSBORN: Where are we then?

VICK: Oh, I see, I see.

OSBORN: So we have to be certain that he makes it on the jury.

VICK: Well now, here's one thing, TOMMY. He's a member of the CWA, see, and the Teamsters, er

OSBORN: Well, they'll knock him off.

VICK: Naw, they won't. They've had a fight with the CWA, see?

OSBORN: I think everything looks perfect.

VICK: I think it's in our favor, see. I think that'll work to our favor.

OSBORN: That's why I'm so anxious that they accept him.

VICK: I think they would, too. I don't think they would have a reason in the world not to. I don't think that I'm under any surveillance or suspicion or anything like that.

OSBORN: I don't think so.

VICK: I don't know. I don't frankly think, since last year and since I told them I was through with the thing, I don't think I have been. Now FRED.

OSBORN: I don't think you have either.

VICK: You know FRED and I may not (pause), he may be too suspicious and I may not be suspicious enough. I don't know.



*Motion—Publicity—Exhibit H, Cont'd*

OSBORN: I think you've got it sized up exactly right.

VICK: Well, I think so.

OSBORN: Now, you know you promised that fella that you would have nothing more to do with that case.

VICK: That's right.

OSBORN: At that time you had already checked on some of the jury that went into MILLER'S court. You went ahead and did that.

VICK: Well, here's another thing, TOMMY.

OSBORN: — — — church affiliations, background, occupation and that sort of thing on those that went into MILLER'S court. You didn't even touch them. You didn't even investigate the people that were in Judge GRAY'S court.

VICK: Well, here's the thing about it, TOMMY. Soon as this damn thing's over, they're gonna kick my . . . out anyway, so probably FRED's too. So, I might as well get out of it what I can. The way I look at it. I might be wrong cause the Tennessean is not gonna have anything to do with anybody that's had anything to do with the case now or in the past, you know that. Cause they're too close to the KENNEDYs.

OSBORN: All right, so we'll leave it to you. The only thing to do would be to tell him, in other words your next contact with him would be to tell him if he wants that deal, he's got it.

VICK: O.K.

OSBORN: The only thing it depends upon is him being accepted on the jury. If the government challenges him there will be no deal.

VICK: All right. If he is seated.

OSBORN: If he's seated.

VICK: He can expect five thousand then and

OSBORN: Immediately.

*Motion—Publicity—Exhibit H, Cont'd*

VICK: Immediately and then five thousand when it's hung. Is that right?

OSBORN: All the way, now!

VICK: Oh, he's go to stay all the way?

OSBORN: All the way.

VICK: No swing. You don't want him to swing like we discussed once before. You want him

OSBORN: Of course, he could be guided by his own b---, but that always leaves a question. The thing to do is just stick with his crowd. That way we'll look better and maybe they'll have to go to another trial if we get a pretty good count.

VICK: Oh. Now, I'm going to play it just like you told me previously, to reassure him and keep him from getting panicky, you know. I have reason to believe that he won't be alone, you know.

OSBORN: You assure him that. 100%.

VICK: And to keep any fears down that he might have, see?

OSBORN: Tell him there will be at least two others with him.

VICK: Now, another thing, I want to ask you does JOHN know anything. You know, I originally told JOHN about me knowing.

OSBORN: He does not know one thing.

VICK: He doesn't know? O.K.

OSBORN: He'll come in and recommend this man — — — and I'll say well just let it alone, you know.

VICK: Yeah. So he doesn't know anything about this at all?

OSBORN: Nothing.

VICK: Now he hasn't seen me. When I firht came here he was in here, see.

,OSBORN: — — — — We'll keep it secret. The way to

*Motion—Publicity—Exhibit H, Cont'd*

keep it safe is that nobody know about it but you and me —  
— — — where could they ever go?

VICK: Well that's it, I reckon, er I'll probably go down there. See, I'm off tonight. I'm off Sunday and Monday, see. That's why I talked to you yesterday. I had a notion to go down there yesterday cause I was off last night and I'm off again tonight.

OSBORN: It will be a week at least until we know the trial date.

VICK: O.K. You want to hold up doing anything further till we know.

OSBORN: Unless he should happen to give you a call — — — something like that, then you just tell him, whenever you happen to run into him.

VICK: Well, he's not apt to call, cause see.

OSBORN: You were very circumspect.

VICK: Yeah. We haven't talked really definite and I think he clearly understands. Now, he might, it seemed to me that maybe he thought I was joking or, you know.

OSBORN: That's a good way to leave it, he's the one that brought it up.

OSBORN: — — —

VICK: Well, I knew he would before I went down there.

OSBORN: Well, — —

VICK: Huh?

OSBORN: I'll be talking to you.

VICK: I'll wait a day or two.

OSBORN: Yeah, I would.

VICK: Before I contact him. Don't want to seem anxious and er

OSBORN: — — —

VICK: O.K. See you later.

(Woman's voice heard.)

VICK: You want me to give her that bill for that other work?

*Motion—Publicity—Exhibit H, Cont'd*

OSBORN: Yes, give her the bill.

VICK: Any time?

OSBORN: Any time.

VICK: O.K.

OSBORN: But it will be a day or two before we will be able to pay it.

VICK: O.K.

OSBORN: O.K.

VICK: Thank you DELORES."

(Door opened and closed Traffic noise. End of recording).

*Nashville Banner—Nov. 21, 1963—Excerpts*

**I WAS TRAPPED: OSBORN**

(8 Col. Headline)

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**WERE OTHERS APPROACHED?**

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**HOFFA TRIAL TO BEGIN ON SCHEDULE**

*The Nashville Tennessean—Nov. 21, 1963*

**TRIAL DATE STANDS DESPITE DISBARMENT**

. . . . .

In handing down the decision, the two judges issued a scathing report accusing Osborn of conspiring to bribe a prospective juror in Hoffa's upcoming trial. The judges stated Osborn offered \$10,000 through a middleman to the prospective juror to deadlock the jury.

The judges said, based on the evidence, Osborn engaged "in a brazen attempt to bribe and improperly influence a



*Motion—Publicity—Exhibit H, Cont'd*

prospective juror," and said this is "an indication of such callous and shameful disregard of duty, such a lack of moral fitness and sense of professional ethics, as to warrant no lesser punishment than the removal of his name from the roll of attorneys permitted to practice law in this court."

The judges, in their report, flatly rejected any contention that Osborn was entrapped by Vick. Miller wrote:

"Apparently the respondent (Osborn) is attempting to

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[Inset in Page 1 Story]

INSIDE: Read the complete text of the Osborn-Vick transcript, Page 13; Judge Miller and Judge Gray's memorandums, Page 4; editorial, "Again—Court Meets Challenge," also Jack Knox cartoon, Page 6, and additional story on Page 3.

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convince the court, or to leave the impression, that he was in some way entrapped by Robert D. Vick into committing an offense, and that except for the suggestion and persuasion of Vick he would not have been involved.

"The stubborn fact remains from the undisputed proof, and the respondent admits, that he engaged in a conversation with Vick concerning an effort to improperly reach and influence the juror Elliott by the use of money in the total of \$10,000.

"Whether the idea originated with Vick or with respondent, or whether one or the other was the instigator or "aggressor" in the transaction is wholly immaterial and beside the point. The conversation did take place and Vick did leave the respondent's office with respondent's understanding that an effort would be made to contact and influence this particular juror. The respondent had no way of knowing that the contact would not be made at any time. He did nothing to cancel the arrangement made with Vick,

*Motion—Publicity—Exhibit H, Cont'd*

although he had four days' time to do so between the time Vick last left his office on Nov. 11 and the time that the respondent was first called before the court on Nov. 15."

. . . . .

**Nashville Banner—Nov. 21, 1963 (Editorial)**

**Again—**

**COURT MEETS CHALLENGE**

The last ditch battle against forces—regardless of identity—holding in contempt the integrity of man and the institutions of government, is not being waged in Washington alone. To it outraged conscience rallies wherever and whenever suspected sinister operations raise a challenge.

Whatever the future holds for the United States of America; whenever and wherever the courts and sanctity of the jury system are discussed as the last refuge of justice for the individual, the Federal District Court in Nashville will be a shining symbol of steadfastness and honor.

. . . . .

The tragedy represented by circumstances warranting, in the judgment of these judges, the disbarment there of Attorney Z. T. Osborn Jr., cannot but bring sadness to all who had watched his remarkable rise in the legal field. But in the tragic pattern laid by fragments of that brilliant career is written the proof that there is no power stronger than the law as administered by men faithful to conscience and public duty.

By the very nature of the case, it does not end at this point. Judges Miller and Gray have acted. The procedure from here in the Osborne case is in the hands of the Department of Justice.

*Motion—Publicity—Exhibit H, Cont'd*

**Nashville Banner—Nov. 21, 1963**

**Gained Fame In Remap Case:**

**OSBORN HAD METEORIC RISE**

The lanky, gangling Zeno Thomas Osborn Jr. had a meteoric rise in Nashville legal circles and gained nationwide fame when he successfully headed the battle in the Tennessee reapportionment case.

Osborn, who was with the historic remap fight all the way, guided the lawsuit through a series of state court reversals for nearly four years before it entered the federal legal arena in 1959.

In 1961 Osborn personally argued the remap case for the plaintiffs before the U.S. Supreme Court in 1961 and gained his greatest triumph in 1962 when the high tribunal ruled federal courts could intervene in state reapportionment cases.

*Judge Miller Presided*

Ironically, when Osborn was arguing the suit at the lower federal court level, one of the judges presiding was U.S. District Judge William E. Miller.

The 44-year-old man, who now wears conservative \$200 suits, had an humble beginning in the legal field. After attending little Centre College at Danville, Ky., he was graduated from the YMCA Night Law School in Nashville in 1940.

He immediately hung out his shingle at a small office in Old Hickory and was a struggling young lawyer until he joined the U.S. Army during World War II.

Osborn enlisted as a private on June 13, 1941 and rapidly received promotions. On May 28, 1944 he received a medical discharge as a first lieutenant on a physical defect which existed when he entered the service.

. . . . .

*Motion—Publicity—Exhibit H, Cont'd*

***The Nashville Tennessean—Nov. 22, 1963***

## **U.S. PROBE OF OSBORN SEEN**

### **ATTORNEY SAYS HE'LL APPEAL**

By **NELLIE KENYON**

The federal grand jury is expected to convene next week to investigate Nashville attorney Z. T. Osborn Jr., disbarred from federal court practice after being found guilty of a plan to bribe a prospective juror in James R. Hoffa's coming jury-tampering trial.

Osborn, who Wednesday was found guilty of "criminal and profesisonal violations and misconduct" by two federal court judges, arrive dhere last night from Washington and said he will appeal the order of the judges.

***The Nahshville Tennessean—Nov. 22, 1963***

### **STORY CONFLICTS BRING EXPULSION**

In the conclusion he listed in his memorandum on the disbarment proceedings, Miller said in part that the following things appeared to be conclusively established:

("That it was the plan, purpose and intent of the respondent (Osborn) at the time of said conversations to have the money supplied to make the said payments to the said juror on the conditions stated.

"That the respondent when he appeared before the court on Nov. 15, 1963, made untruthful statements to the court and gave false answers to questions which were propounded to him. His statements and answers on that occasion to the effect that he knew of no plans to improperly influence



*Motion—Publicity—Exhibit H, Cont'd*

the jury in the forthcoming Hoffa trial, and that he had engaged in no conversation with any person for the purpose of improperly influencing any prospective juror in the said case, specifically juror Ralph A. Elliott, were false and untruthful and were known to be such by respondent.

“That the respondent’s statements and testimony before the court on Nov. 19, 1963, to the effect that the idea of attempting to influence a prospective juror in the forthcoming Hoffa case originated in the mind of Robert D. Pick and not in the respondent’s mind, and that Vick was the ‘aggressor’ in the matter and not respondent, were false and untruthful and known to be such by the respondent at the time. . . .

“That the respondent’s statement before the court on Nov. 19, 1963, to the effect that he had not formed an intent to carry through on the ‘deal’ he discussed with Vick on Nov. 11, 1963, was a false and untruthful statement and known to be such by respondent at the time it was given. . . .

“That the respondent . . . did himself engage in a brazen attempt to bribe and improperly influence a prospective juror is an indication of such a callous and shameful disregard of duty, such a lack of moral fitness and sense of professional ethics, as to warrant no lesser punishment than the removal of his name from the roll of attorneys permitted to practice law in this court.”

***The Nashville Tennessean—Nov. 22, 1963 (Editorial)***

**COURT PROVES SANCTITY IN OSBORN  
DISBARMENT**

Federal District Judges William E. Miller and Frank Gray Jr. have disbarred Mr. Z. T. Osborn Jr. from practicing law in all federal courts for his actions in a plan to bribe a prospective juror in the approaching trial of his client, Mr. James R. Hoffa.

*Motion—Publicity—Exhibit H, Cont'd*

The judges acted swiftly and firmly to protect the integrity of the court after the shocking facts of Mr. Osborn's attempt had been presented to them by the FBI and the Justice Department.

• • •

The case against Mr. Osborn was thoroughly documented by personal testimony, a court approved tape recording of his conversation with a proposed intermediary in the plot, and finally by his own admission.

The attempt was so flagrant and so devoid of legal ethics and consciousness of the sanctity of the courts it seems astounding it could have been made by a successful attorney who has practiced law in the federal courts for many years.

The judges rejected Mr. Osborn's plea that he was led into a trap and was not the aggressor in the attempt. Judge Miller held such a claim was immaterial to the fact that he had offered to pay a juror \$10,000 to hang the jury—and then denied it to the court.

• • •

It undoubtedly caused Judges Miller and Gray much pain to lay such a devastating decision on a rising lawyer with a promising future. Mr. Osborn was a popular member of the Nashville bar and was slated to become its next president. He had once been city attorney and an assistant U.S. district attorney. As a private lawyer he won the legislative reapportionment suit before the U.S. Supreme Court. The reasons for his action must have been compelling indeed.

But Mr. Osborn apparently gave the judges no grounds for leniency. He not only made untruthful and incorrect statements, they found. But they also ruled "he has failed and refused to give the Court a full, frank and complete

*Motion—Publicity—Exhibit H, Cont'd*

disclosure of knowledge which he possesses concerning efforts to improperly influence other prospective jurors" in the Hoffa trial.

**Nashville Banner—Nov. 22, 1963**

**VICK 'ADMITS' HE TRIED TO FIX  
'62 HOFFA JUROR**

(Copyright, 1963, By The Nashville Banner)

By BRAD CARLISLE

Metropolitan Patrolman Robert D. Vick, who suddenly became a government informer against Nashville lawyer Z. T. Osborn, admitted he conspired to fix a juror in Teamsters President James R. Hoffa's trial here last year, official court records reveal.

Vick, who is now in hiding under protection of U.S. deputy marshals, related the details in an interview with John J. Hooker Sr., and his statement was placed in the U.S. District Court records following the disbarment of Osborn.

In part of Vick's statement, with Hooker questioning him, it went like this:

Q. Now, did you ever have any discussion with a Mr. Ramsey about talking to a lawyer in Lebanon named Harry Beard about the jury situation?

A. Yes.

Q. What happened about that?

A. Well, I believe that was in a—in connection with a Mrs. Harrison (Mrs. D. M. Harrison Jr. was on the Hoffa jury) that was serving on—that did serve on the jury in the Test Fleet case.

Q. And who was present in that—at that conversation?

A. Mr. Ramsey and Mr. Beard and myself.

Q. And where did it take place?

A. Well, part of the conversation took place in Mr.

*Motion—Publicity—Exhibit H, Cont'd*

Beard's office, and part of the conversation took place in Mr. Beard's back yard.

Q. But it was all on one occasion?

A. I'm not sure, Mr. Hooker, really. I—I we've discussed it twice, and I—I believe that it was on the same occasion, but it could very well have been two different trips.

Q. Was that while the Test Fleet case was in progress,

A. That's correct. That's correct.

Q. Do you remember the substance of those conversations?

A. Well, the aim of the conversation and our trip was to approach Mrs. Harrison through Mr. Harrison who was an attorney in Lebanon.

Q. Was that approach ever made to your knowledge?

A. Not to my knowledge.

. . . . .

**Nashville Banner—Nov. 22, 1963**

**JURY PROBE OF HOFFA SET NEXT WEEK**

By CRAIG ELLIS

A special federal grand jury will be called into session next week to investigate jury tampering allegations against Z. T. Osborn Jr. "and others," The Banner learned today.

. . . . .

**Nashville Banner—Nov. 22, 1963**

**COURT TOLD HOFFA NOT INVOLVED**

By DUREN CHEEK

United Press International

Teamsters President James R. Hoffa played no part in an alleged jury bribing attempt which led to the disbar-



*Motion—Publicity—Exhibit H, Cont'd*

ment of a Nashville attorney, U.S. Court was told in a secret hearing.

Judge William E. Miller disclosed Thursday that attorney Z. T. Osborn Jr., told him Hoffa was unaware of any attempt to bribe a prospective juror for Hoffa's Jan. 6 jury tampering trial.

. . . . .

***The Nashville Tennessean—Nov. 23, 1963***

**JURY TAMPER HEARING SET**

By NELLIE KENYON

The federal grand jury will convene Friday to consider "possible jury tampering," U.S. Atty. Kenneth Harwell said yesterday.

Harwell would not be more specific, but it is presumed the jury will be asked to investigate the attempt by attorney Z. T. Osborn Jr. to bribe a juror.

The jury, according to reports, may also be asked to consider other alleged jury tampering matters.

Osborn was disbarred from practicing law in federal court Wednesday after the court held that he engaged "in a brazen attempt to bribe and improperly influence a prospective juror."

Osborn, Nashville attorney for Teamsters President James R. Hoffa, was charged with attempting to arrange a \$100,000 bribe of a prospective juror in the forthcoming jury tampering case of Hoffa and six other defendants.

The court found Osborn guilty "of an attempt to improperly influence" Ralph A. Elliott, of Springfield, a prospective juror, through Robert D. Vick, a Metro policeman.

. . . . .

*Motion—Publicity—Exhibit H, Cont'd*

**Nashville Banner—Nov. 26, 1963**

**JURY MEETS MONDAY ON 'TAMPERING'**

By CRAIG ELLIS

A special federal grand jury has been ordered into session Monday to begin an investigation into alleged jury tampering in connection with the upcoming trial of Teamsters President James R. Hoffa.

U.S. Atty. Kenneth Harwell said the grand jury, slated to begin its investigation at 9 a.m. Monday, may be in session several days or "as long as several weeks."

Harwell told The Banner "the government will submit to the grand jury all evidence in connection with alleged jury tampering by attorney Z. T. Osborn Jr."

. . . . .

**Nashville Banner—Nov. 27, 1963**

**OSBORN QUILTS NASHVILLE BAR BOARD**

By BRAD CARLISLE

Nashville lawyer, Z. T. Osborn Jr., disbarred in federal courts, has resigned as a member of the board of directors of the Nashville Bar Association and has agreed not to practice law in our state courts.

The announcement was made today by D. L. Lansden, president of the Nashville Bar, following an exchange of letters with Osborn.

Federal authorities accused Osborn of conspiring to offer a prospective juror \$10,000 to "hang" the jury-tampering jury. U.S. Attorney Kenneth Harwell said a federal grand jury will convene Monday to investigate the charges.

. . . . .

*Motion—Publicity—Exhibit H, Cont'd*

**The Nashville Tennessean—Nov. 27, 1963**

**BAR TO WEIGH OSBORN'S CASE**

In other action yesterday, U.S. Atty. Kenneth Harwell said the federal grand jury will convene at 9 a.m. Monday "to consider possible jury tampering." He declined to be any more specific. But it is presumed the Osborn matter will be presented to the body.

**Nashville Banner—Nov. 30, 1963**

**U.S. JURY SECURITY ORDERED**

(8 Col. Headline)

**HOFFA CASE PROBE SET ON MONDAY**

By CRAIG ELLIS

U.S. officials have ordered top security measures for a special federal grand jury investigation beginning Monday into alleged jury tampering in the upcoming trial of Teamsters President James R. Hoffa, The Banner learned today.

Armed deputy marshals will stand guard outside the eighth floor grand jury room at the U.S. Courthouse and have orders to bar all unauthorized persons from the immediate vicinity of the room, it was learned.

U.S. Atty. Kenneth Harwell and Carrol D. Kilgore, first assistant attorney, conferred Thursday and Friday to determine the identity and number of persons who will be subpoenaed to appear as witnesses before the grand jury.

Harwell said identity of the subpoenaed witnesses will not be made public until after their appearance.

A number of persons, the majority believed to be Nashville-Middle Tennessee residents are expected to be called.

**Motion—Publicity—Exhibit H, Cont'd**

Nashville-based agents of the Federal Bureau of Investigation will lead off the witnesses before the investigative body early next week, according to sources.

Highlighting the probe will be the expected appearance before the grand jury next week of Metropolitan Patrolman Robert D. Vick, government informer against Attorney Z. T. Osborn Jr., local counsel for Hoffa.

Osborn was disbarred from federal court practice last week after being accused by District Judges William E. Miller and Frank Gray Jr. of attempting to offer a \$10,000 bribe to a prospective juror for the Hoffa trial.

. . . . .

**The Nashville Tennessean—Dec. 1, 1963**

**VICK TO TALK TO U.S. JURY**

By NELLIE KENYON

The Metro patrolman who taped an alleged effort to tamper with the jury in the upcoming James B. Hoffa trial is expected to appear before a federal grand jury which begins a probe tomorrow.

And Federal Bureau of Investigation agents who worked closely with Patrolman Robert D. Vick are expected to take information they gleaned in the investigation to the special grand jury.

Vick, according to information already filed with federal court, had a small recorder taped to his body and recorded Z. T. Osborn Jr., attorney, as he talked about the possibility of tampering with a prospective juror in the Hoffa case, set for early next year here.

The trial of the Teamsters chief and six others will be on charges of tampering with a jury which tried Hoffa in federal court here last year on a conspiracy case.

As a result of the information presented to the court by



*Motion—Publicity—Exhibit H, Cont'd*

Vick, U.S. District Judges William E. Miller and Frank Gray Jr. disbarred Osborn from federal courts. Osborn, who has said he plans an appeal, has notified state bar officials he will not attempt to practice law in state courts until the case is settled.

The federal grand jury will convene at 9 a.m. tomorrow, when security measures will be in effect to keep unauthorized persons away from the eighth

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***The Nashville Tennessean—Dec. 2, 1963***

**OSBORN CASE BEFORE JURY**

U.S. Dist. Atty. Kenneth Harwell said last night he believes a federal grand jury convening at 9 a.m. today will hear only jury tampering charges involving disbarred Nashville lawyer Z. T. Osborn Jr.

Asked if the grand jury might look into other areas, he answered, "I don't think so." But Harwell said the jury will explore any matter brought before it pertinent to jury tampering.

The tampering charges which brought on the special grand jury concern the Jan. 6 trial here of Teamsters President James R. Hoffa.

Osborn, a Nashville attorney for Hoffa, was disbarred from federal court here after it held that he had engaged in conversations for the purpose and with the intent of improperly influencing a prospective juror for the Hoffa trial.

Vick, according to information filed with the federal court, had a small recorder taped to his body as Osborn reportedly talked about the possibility of tampering with a prospective juror in the Hoffa case.

Security measures have been taken to bar unauthorized

*Motion—Publicity—Exhibit H, Cont'd*

persons from the eighth floor of the U.S. Courthouse near the grand jury room.

Names of the persons subpoenaed by the grand jury will not be posted until after their appearance.

As a result of the information presented to the court by Vick, U.S. District Judge William E. Miller and Frank Gray Jr. disbarred Osborn from federal court practice. Osborn, who said he plans an appeal, notified state bar officials he will not attempt to practice law in state courts until the case is settled.

The court held that Osborn requested Vick to contact a prospective juror and offer him \$5,000 when selected on the jury, and another \$5,000 if the trial resulted in a hung jury.

It held it was Osborn's plan to make the money available if the conditions were carried out.

The court held that Osborn made untruthful statements and gave false answers when he appeared before the court Nov. 15 and said he knew of no plan to improperly influence a prospective juror.

The court said Osborn made further false statements before it Nov. 19 when he said the plan was originated by Vick.

The court made it clear the prospective juror was not contacted.

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***The Nashville Tennessean—Dec. 2, 1963 (Editorial)***

**DISBAR RULING IS ONLY PUT OFF**

Mr. Z. T. Osborn Jr., Nashville lawyer who has been disbarred from federal court for plotting to bribe a juror in Mr. James R. Hoffa's trial, has resigned as a board member of the Nashville Bar Association.

Mr. Osborn also has agreed not to practice law in state

*Motion—Publicity—Exhibit H, Cont'd*

courts and to surrender his license voluntarily if his federal disbarment is upheld on an appeal he is planning.

Mr. Osborn thus has temporarily relieved the Nashville and Tennessee Bar Associations of the necessity of deciding whether to revoke his license to practice in state courts.

Regardless of the outcome of Mr. Osborn's appeal in federal court, it will have no bearing on the bar associations' responsibility to make their own judgment—on the basis of the evidence—on his fitness to practice law in the state courts.

In view of Mr. Osborn's pledges to the Nashville Bar Association, that body is justified in waiting to make its decision until the outcome of the federal appeal is known. However, it is a decision that can only be postponed and not avoided.

**Nashville Banner—Dec. 2, 1963**

**JURY LAUNCHES PROBE, HEARS  
TAPE RECORDINGS**

By CRAIG ELLIS

A special federal grand jury today launched a probe into alleged jury-fixing charges and apparently heard tape recordings obtained through the efforts of FBI agents.

The special grand jury, heavily guarded by government officers, is investigating alleged jury tampering in the upcoming trial of Teamsters President James R. Hoffa.

The grand jurors presumably heard recordings of conversations between Nashville lawyer Z. T. Osborn Jr. and Metropolitan Policeman Robert D. Vick.

Two tape recorders were brought to the heavily guarded eighth floor jury room about 10 a.m. by agents of the Federal Bureau of Investigation.

Three deputy U.S. marshals stood guard outside the

**Motion—Publicity—Ex. H, Cont'd**

grand jury room and allowed only authorized persons to enter a witness room adjacent to the grand jury room.

. . . . .

**The Nashville Tennessean—Dec. 3, 1963**

**TAMPER JURY HEARS 3 MEN**

By NELLIE KENYON

Three witnesses appeared before the federal grand jury which began an extensive investigation yesterday of possible jury tampering, including a reported bribery attempt by Nashville lawyer Z. T. Osborn Jr.

"This investigation is going to involve any possible jury tampering in this district it makes no difference who they are," said U.S. Atty. Kenneth Harwell.

The probe, he said, will include Osborn.

. . . . .

**The Nashville Tennessean—Dec. 5, 1963**

**OSBORN DENIED NEW TRIAL**

**DISBARRED ATTORNEY TO APPEAL**

**U.S. Judges Gray, Miller Cite 'Voluntary Admission'  
Lawyer Had Authorized Bribe Offer**

By NELLIE KENYON

Nashville lawyer Z. T. Osborn's motion for a new trial in his federal disbarment was denied yesterday by U.S. District Judge William E. Miller and Frank Gray Jr.

The motion was rejected, according to the court order, because Osborn "voluntarily," and without reference to other evidence against him, told the court "he had author-



*Motion—Publicity—Ex. H, Cont'd*

ized the offer of a bribe to a prospective juror" in the upcoming trial of Teamsters President James R. Hoffa.

. . . . .

**Nashville Banner—Dec. 5, 1963**

[8 Col. Headline]

**OSBORN DENIED NEW HEARING BY  
JUDGES: APPEAL DUE**

. . . . .

**The Nashville Tennessean—Dec. 6, 1963 (Editorial)**

**FEDERAL JUDGES INSPIRE TRUST**

Federal District Judges William E. Miller and Frank Gray Jr. have denied Mr. Z. T. Osborn Jr.'s motion for a rehearing of his disbarment from federal practice by the two judges.

Judges Miller and Gray, in their order, noted Mr. Osborn's complaint of lack of notice by the court and said this position "clashes incongruously with the record."

The court stated Mr. Osborn had been given oral notice of his hearing by the judges, and formal notice by an order to appear on a specific date. And then, the court went on, Mr. Osborn appeared at his own request, six days in advance of the set hearing date.

The judges declared that Mr. Osborn stated to the court that he had authorized the offer of a bribe to a prospective juror in a case pending in the court—the case of jury tampering against Mr. James Hoffa.

"He is not entitled to a rehearing on a motion that does not in any way suggest how this statement could possibly be reconciled with a finding that he is morally fit to practice law," the order said.

The judges have acted promptly and forcefully in the

***Motion—Publicity—Ex. H, Concluded***

light of evidence available to them to protect the sanctity of the court, and fortified their original ruling by their firm denial of a rehearing.

Mr. Osborn is now entitled to appeal their decision to a higher court. The same system of justice that gives the courts the power to protect themselves against those who would bribe, also gives the right of appeal to accused. This is as it should be in a society where law prevails.

. . . . .

***The Nashville Tennessean—Dec. 7, 1963***

**[8 Col. Headline]**

**U.S. JURY INDICTS OSBORN**

**Motion to Suppress**

In The  
**UNITED STATES DISTRICT COURT**  
For the Middle District of Tennessee  
Nashville Division

**UNITED STATES OF AMERICA**

**vs.**

**Z. T. OSBORN, JR.**

Criminal  
No. 13,484

**MOTION TO SUPPRESS EVIDENCE  
ILLEGALLY OBTAINED**

Comes the defendant, Z. T. Osborn, Jr., by his attorney, and respectfully moves the Court to suppress the following evidence:

1. That tape recording of a conversation had between the defendant and one Robert D. Vick on or about November 11, 1963.
2. The testimony of the said Robert D. Vick relating to said tape recorded conversation between the defendant and the said Robert D. Vick and also the testimony of the said Robert D. Vick relating to conversations with the defendant and occurring on or about October 31, November 3 and November 8, 1963.
3. The statement made by the defendant before Honorable William E. Miller, United States District Judge, at his chambers on or about November 20, 1963.

For grounds, the defendant respectfully shows:

First, said tape recording and those conversations between the said Robert D. Vick and the defendant occurring on or about October 31, November 3, November 8 and November 11, 1963, were obtained and had in violation of

*Motion to Suppress*

the Fourth Amendment to the United States Constitution in that the said Robert D. Vick gained admission to the defendant's private office by deceit, pretending to seek employment, when in truth his purpose was to entrap the defendant and unlawfully search for and seize the words and thoughts of the defendant after inducing the defendant to consent to the commission of the pretended crime described in the first count of the indictment herein.

Second, the statement made by the defendant before Judge William E. Miller was obtained from him through use of the illegally-obtained tape recording of said conversation of November 11, 1963 and the threatened confrontation of the defendant with said tape recording in violation of the Fourth Amendment to the Constitution of the United States.

Third, the statement of the defendant made before Judge William E. Miller on or about November 20, 1963 was obtained from the defendant by inducing him to hope and believe that he would not be prosecuted for the offenses described in the indictment if he would make said statement.

WHEREFORE, the defendant respectfully moves to suppress that evidence described in his foregoing motion and he prays:

- (1) For a hearing and to be permitted to offer evidence in support of the factual matters set forth in his motion to suppress and
- (2) For the entry of an order adjudging said evidence to have been illegally obtained and suppressing the same.

Respectfully submitted.

**JACK NORMAN, SR.**

Attorney for the defendant

213 Third Avenue, North

Nashville 3, Tennessee



*Motion to Suppress, Memorandum*

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing motion and the memorandum in support thereof, attached thereto, has been served by delivering the same to Honorable Kenneth Harwell, United States Attorney, at his office in the U. S. Courthouse, this 21st day of February, 1964.

**JACK NORMAN, SR.**

In The

**UNITED STATES DISTRICT COURT**

**For the Middle District of Tennessee**

**Nashville Division**

**UNITED STATES OF AMERICA**

**vs.**

**Z. T. OSBORN, JR.**

**No. 13,484**

**Criminal**

**MEMORANDUM IN SUPPORT OF MOTION  
TO SUPPRESS EVIDENCE**

**MAY IT PLEASE THE COURT:**

At the hearing the defendant will prove and now offers to prove the factual allegations contained in his foregoing motion to suppress evidence. Specifically, the defendant will prove that Robert D. Vick, although pretending otherwise, came to the defendant's private office for the purpose of inducing the defendant to agree to the commission of a pretended offense, entrapping the defendant and for the purpose of conducting an unreasonable search and seizure of the person and thoughts, words and actions of the defendant in violation of the Fourth Amendment to the Constitution. At the hearing the defendant will prove and now offers to prove specifically that the defendant's statement before Judge Miller was made after disclosure of

*Motion to Suppress, Memorandum*

the existence of two tape recordings obtained by Robert D. Vick and further after Joohn J. Hooker, Sr., Special Assistant to the Attorney General of the United States, had assured friends and the attorney representing the defendant that if he would make a disclosure before Judge William E. Miller he would not be subjected to prosecution upon a criminal charge.

The provisions of the Fourth and Fifth Amendments to the Constitution are so well known that it is considered unnecessary to set them forth verbatim. They protect every citizen against unreasonable searches and seizures and they guarantee a fair and impartial trial and that the individual cannot be compelled to testify against himself.

Two recent cases, *Lopez v. United States*, 10 Law Ed. 2d 462, — U. S. —, 83 Sup. Ct. —, May 27, 1963, and *Fahy v. Connecticut*, 11 Law Ed. 2d 191, — U. S. —, 84 Sup. Ct. —, December 2, 1963, and one comparatively ancient case, *Bram v. United States*, 42 Law Ed. 568, 168 U. S. 532 (1897) are considered to be of importance in determining the questions presented by the defendant's motion to suppress.

In *Lopez v. United States*, three judges dissenting, the Chief Justice concurring in a separate opinion, the United States Supreme Court approved use by a government agent of a concealed tape recorder. IN THAT CASE THE GOVERNMENT AGENT HAD FROM THE OUTSET IDENTIFIED HIMSELF AS A GOVERNMENT AGENT TO THE DEFENDANT. In your defendant's case the government agent, Vick, not only made no disclosure of his identity as a government agent but affirmatively, as will be shown at the hearing, misrepresented himself and gained admission to the defendant's office by virtue of these misrepresentations. This distinguishing factor gives the dissenting opinions in *Lopez v. United States* great significance. We here quote portions as follows:

*Motion to Suppress, Memorandum*

"... For one thing, electronic surveillance is almost inherently indiscriminate, so that compliance with the requirement of particularity in the Fourth Amendment would be difficult; for another, words, which are the objects of an electronic seizure, are ordinarily mere evidence and not the fruits or instrumentalities of crime, and so they are impermissible objects of lawful searches under any circumstances, see p. 481, *supra*; finally, the usefulness of electronic surveillance depends on lack of notice to the suspect.

"... The requirements of the Fourth Amendment are not technical or unreasonably stringent; they are the bedrock rules without which there would be no effective protection of the right to personal liberty. A search for mere evidence offends the fundamental principles against self-incrimination, as Lord Camden clearly recognized; a merely exploratory search revives the evils of the general warrant, so bitterly opposed by the American Revolutionaries; and without some form of notice, police searches became intolerable intrusions into the privacy of home or office. Electronic searches cannot be tolerated in the name of law enforcement if they are inherently unconstitutional.

• • • • •  
"For there is a qualitative difference between electronic surveillance, whether the agents conceal the devices on their persons or in walls or under beds, and conventional police stratagems such as eavesdropping and disguise. The latter do not so seriously intrude upon the right of privacy. The risk of being overheard by an eavesdropper or betrayed by an informer or deceived as to the identity of one with whom one deals is probably inherent in the conditions of human society. It is the kind of risk we necessarily assume whenever we speak. But as soon as electronic surveillance comes into play, the risk changes

*Motion to Suppress, Memorandum*

crucially. There is no security from that kind of eavesdropping, no way of mitigating the risk, and not even a residuum of true privacy. See p. 471, supra.

"Furthermore, the fact that the police traditionally engage in some rather disreputable practices of law enforcement is no argument for their extension. Eavesdropping was indictable at common law and most of us would still agree that it is an unsavory practice. The limitations of human hearing, however, diminish its potentiality for harm. Electronic aids add a wholly new dimension to eavesdropping. They make it more penetrating, more indiscriminate, more truly obnoxious to a free society. Electronic surveillance, in fact, makes the police omniscient; and police omniscience is one of the most effective tools of tyranny.

"The foregoing analysis discloses no adequate justification for excepting electronic searches and seizures from the requirements of the Fourth Amendment. But to state the case thus is to state it too negatively. It is to ignore the positive reasons for bringing electronic surveillance under judicial regulation. Not only has the problem grown enormously in recent years, see e.g. *Dodisco v. United States* (CA 9 Cal) 298 F. 2d 208; *United States v. Kibot* (CA 2 NY) 295 F. 2d 848, but its true dimensions have only recently become apparent from empirical studies not available when *Olmstead*, *Goldman*, and *On Lee* were decided. The comprehensive study by Samuel Dash and his associates as well as a number of legislative inquiries reveal these truly terrifying facts: (1) Electronic eavesdropping by means of concealed microphones and recording devices of various kinds has become as large a problem as wiretapping, and is pervasively employed by private detectives, police, labor spies, employers and others for a variety of purposes, some downright disreputable. (2)



*Motion to Suppress, Memorandum*

These devices go far beyond simple "bugging", and permit a degree of invasion of privacy that can only be described as frightening. (3) Far from providing unimpeachable evidence, the devices lend themselves to diabolical fakery. (4) A number of states have been impelled to enact regulatory legislation. (5) The legitimate law enforcement need for such techniques is not clear, and it surely has not been established that a stiff warrant requirement for electronic surveillance would destroy effective law enforcement.

"But even without empirical studies, it must be plain that electronic surveillance imports a peculiarly severe danger to the liberties of the person. To be secure against police officers' breaking and entering to search for physical objects is worth very little if there is no security against the officers' using secret recording devices to purloin words spoken in confidence within the four walls of home or office. Our possessions are of little value compared to our personalities. And we must bear in mind that historically the search and seizure power was used to suppress freedom of speech and of the press, see *Lasson, supra*, at 33, 37-50; *Marcus v. Search Warrant*, 367 U.S. 717, 724-729, U. L. Ed. 2d 1127, 1131-1135, 81 S. Ct. 1708; *Frank v. Maryland*, 359 U. S. 360, 376, 3 L. Ed. 2d 877, 887, 79 S. Ct. 304 (dissenting opinion), and that today, also, the liberties of the person are indivisible. 'Under Hitler, when it became known that the secret police planted dictaphones in houses, members of families often gathered in bathrooms to conduct whispered discussions of intimate affairs, hoping thus to escape the reach of the sending apparatus.' *United States v. On Lee* (CA 2 NY) 193 F. 2d 306, 317 (dissenting opinion). Electronic surveillance strikes deeper than at the ancient feeling that a man's home is his castle; it strikes at freedom of communication, a postulate of

*Motion to Suppress, Memorandum*

our kind of society. Lopez' words to Agent Davis captured by the Minifon were not constitutionally privileged by force of the First Amendment. But freedom of speech is undermined where people fear to speak unconstrainedly in what they suppose to be the privacy of home and office. King, Wire Tapping and Electronic Surveillance: A Neglected Constitutional Consideration, 66 Dick L. Rev. 17, 25-30 (1961). If electronic surveillance by government becomes sufficiently widespread, and there is little in prospect for checking it, the hazard that as a people we may become hag-ridden and furtive is not fantasy.

"The right to privacy is the obverse of freedom of speech in another sense. This Court has lately recognized that the First Amendment freedoms may include the right, under certain circumstances, to anonymity. See NAACP v. Alabama, 357 U.S. 499, 2 L. Ed. 2d 1488, 78 S. Ct. 1163; Bates v. Little Rock, 361 U.S. 316, 4 L. Ed. 2d 480, 80 S. Ct. 412; Talley v. California, 362 U.S. 60, 4 L. Ed. 2d 559, 80 S. Ct. 336; Louisiana ex rel Gremillion v. NAACP, 366 U.S. 293, 6 L. Ed. 2d 301, 81 S. Ct. 1338; Gibson v. Florida Legislative Investigation Committee, 372 U.S. 339, 9 L. Ed. 2d 929, 83 S. Ct. 339. The passive and the quiet, equally with the active and the aggressive, are entitled to protection when engaged in the precious activity of expressing ideas or beliefs. Electronic surveillance destroys all anonymity and all privacy; it makes government privy to everything that goes on.

"In light of these circumstances I think it is an intolerable anomaly that while conventional searches and seizures are regulated by the Fourth and Fourteenth Amendments and wiretapping is prohibited by federal statute, electronic surveillance is involved in the instant case, which poses the greatest danger to the right of

*Motion to Suppress, Memorandum*

private freedom, is wholly beyond the pale of federal law."

In *Fahy v. Connecticut*, supra, the Supreme Court of the United States held flatly that a confession or admissions induced by illegally seized evidence are not admissible in a criminal trial.

In *Fahy's* case state officers illegally searched *Fahy's* garage and automobile and seized a can of paint and paint-brush which had been used to paint swastikas on a Norwalk synagogue. Apropos of your defendant's case the Supreme Court commented as follows:

"... Thus petitioner was unable to claim at trial that the illegally seized evidence induced his admissions and confession. Petitioner has told the Court that he would so claim were he allowed to challenge the search and seizure as illegal at a new trial. And we think that such a line of inquiry is permissible. As the Court has noted in the past: 'The essence of a provision forbidding the acquisition of evidence in a certain way is that not merely evidence so acquired shall not be used before the court, but that it shall not be used at all.' See *Silverthorne Lumber Co. v. United States*, 251 U.S. 385, 392, 84 L. Ed. 319, 321, 40 S. Ct. 182, 24 ALR 1426; see also *Nardone v. United States*, 308 U.S. 338, 84 L. Ed. 307, 60 S. Ct. 266; *Wong Sun v. United States*, 371 U.S. 471, 9 L. Ed. 2d 441, 83 S. Ct. 407. Thus petitioner should have had a chance to show that his admissions were induced by being confronted with the illegally seized evidence." 11 L. Ed. 2d 171, p. 175.

Turning to the matter of the hope and promise of immunity from prosecution, it is well settled that a confession is involuntary and inadmissible in evidence if induced by any direct or implied promise, however slight, of reward or immunity. See 20 American Jurisprudence 436, Evidence, Section 306; Annotations of U. S. Supreme Court

*Motion to Suppress, Memorandum*

Cases, 93 L. Ed. 119; 1 L. Ed. 2d 1742; 4 L. Ed. 2d 1834 and cases therein cited.

In *Bram v. United States*, 42 L. Ed. 568, 168 U.S. 532, the prosecution sought in part to justify admission of a declaration of an accused on the ground that it was "a denial of guilt and not a confession."

The Court said, quoting from another case:

"It was a declaration which the state used to procure a conviction; and it is not for the state to say the declaration did not prejudice the prisoner's case. Why introduce it at all unless it was to lay a foundation for the prosecution? The use which was made of the prisoner's statement precludes the state from saying it was not used to his prejudice.

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"In *Russell on crimes*, 6th Ed. 478, it is stated as follows:

'But a confession in order to be admissible must be free and voluntary; that is, must not be extracted by any sort of threats or violence, nor obtained by any direct or implied promises, however slight, nor by the exertion of any improper influence. . . . A confession can never be received in evidence where the prisoner has been influenced by any threat or promise; for the law cannot measure the force of the influence used, or decide upon its effect upon the mind of the prisoner, and therefore excludes the declaration if any degree of influence has been exerted.' " 168 C.S. Page 542, 543, 42 L. Ed. 573.

In this comparatively early case (1897) the Supreme Court called attention to its still earlier (*Boyd v. U. S.*, 116 U.S. 619) recognition of the intimate relationship between the Fourth and Fifth Amendments to the United States Constitution, securing the individual against unreasonable searches and seizures and being compelled to testify against himself, and reasons that in England and in the states at the time of the adoptions of the Amendments



*Motion to Suppress, Memorandum*

the legal principles involved were "considered as resting on the law of nature . . . ." 168 U.S. 544, 545, 42 L. Ed. 574.

*Bram v. United States* contains a summary of the English and American cases on the subject up to 1897; for its recognition of the relationship between the Fourth and Fifth Amendments and for the reasoning which led the Court to reject Bram's declaration, the case could well have been cited by the United States Supreme Court as support for the conclusion reached in Fahy's case.

It is respectfully submitted that the defendant's motion to suppress should be sustained.

JACK NORMAN, SR.

Attorney for the Defendant

*Transcript, Proceedings on Motion*

In the  
**DISTRICT COURT OF THE UNITED STATES**  
For the Middle District of Tennessee  
Nashville Division

UNITED STATES OF AMERICA }  
vs. } Criminal Action  
Z. T. OSBORN, JR. } No. 13,484

*Before*

**THE HONORABLE MARION S. BOYD**, Judge of the United States District Court for the Western District of Tennessee, sitting by desination in the Middle District of Tennessee, at Nashville, Tennessee, on Motion to Dismiss Indictment, Motion for Production, Inspection, and Copying of Papers and Documents, and Motion to Suppress, April 15, 1964.

**APPEARANCES:**

For the Plaintiff.

**JAMES F. NEAL, ESQ., and**  
**DAVID P. BANCROFT, ESQ.**  
Special Attorneys  
U. S. Department of Justice  
Washington, D. C.

For the Defendant:

**JACK NORMAN, ESQ.**  
Attorney at Law  
213 Third Avenue, North  
Nashville, Tennessee

**TRANSCRIPT OF THE PROCEEDINGS**

**Transcript P. 2**

**THE COURT:** Gentlemen when we were last in court on this matter in February, I think it was stated that the parties might like to offer some proof on these motions—

*Transcript, Proceedings on Motion*

in particular, on the one to dismiss. I do not know what that istuation is this morning, but we will hear that motion first, of course.

I take it that both sides are ready.

MR. NORMAN: Yes, sir.

MR. NEAL: The government is ready, your Honor.

THE COURT: All right. There has been some suggestion this morning that you gentlemen might be able to stipulate on a few things. Have you met with some success in that connection?

MR. NEAL: Yes, your Honor, I think we have. Mr. Norman has authorized me to make a statement. I will be as precise and correct as possible.

As your Honor may know, this question involved in the motion to dismiss involves the method of selecting the grand jury that returned the indictment involved here: United States v. Z. T. Osborn, Jr., Criminal Number 13,484. It was the grand jury convened on January 17, 1963, headed by a foreman by the name of Richard Palmer III. That is the grand jury involved, and its method of selection

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is the issue involved in the motion to dismiss. This same issue—

THE COURT: I might just interrupt to say this, that the Court has been furnished the motions relating to this whole matter—three of them, I believe—and you gentlemen on both sides have been good enough to furnish the Court with memorandums; and the Court is on speaking terms, I would say, with it, and I believe the Court appreciates, at least to some extent, the things that are involved here. So you might keep that in mind as you go along here, gentlemen, this morning.

MR. NEAL: Yes, sir.

This same issue has been the subject of two or three

*Transcript, Proceedings on Motion*

hearings in this district with respect to the same grand jury. It is our view—the view of counsel for both sides in this case—that we can agree to the record on this motion with your Honor's consent.

**THE COURT:** Can agree to what?

**MR. NEAL:** Agree to the record without a hearing this morning, and we would propose to do it, your Honor, as follows:

We would agree that the Court may consider the motions, memoranda of law—if, of course, the memoranda of law is any help—supporting documents, government responses, supporting documents, memoranda of law, and oral and documentary evidence taken with respect to the same issue in the case of *United States v. James R. Hoffa et al*, Criminal No. 13,383, Middle District of Tennessee, Nashville Division, on the hearing on the same issue; and also may consider the motions, memoranda of law, supporting documents, government responses, memoranda of law, supporting documents, and oral and documentary testimony taken

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with respect to the same issue in the combined cases of *United States v. Albert P. Cole* (Criminal Number 13,385), *United States v. Henry F. Bell* (Chiminal Number 13,386), and *United States v. Cole, Frazier, and Paden* (Criminal Number 13,387)—all cases in the Middle District of Tennessee, Nashville Division—the indictment in each of which was returned by the same grand jury that returned the indictment in this case.

The hearing of the three combined cases (I believe I am correct on this matter) occurred on October 3, 1963.

The hearing on the Hoffa case that I mentioned previously started July 20, 1963. I believe the testimony with respect to that—to the issue involved here came on the 21st and the 22nd of July. There was a day or two of that.



*Transcript, Proceedings on Motion*

We would submit for your Honor's consideration that that be the record on which your Honor will decide this motion with the addition of certain materials here.

In addition to that, we would offer—and I have the consent of both sides to offer—Exhibit Number 1 to this hear-

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ing.

THE COURT: What is that?

MR. NEAL: This is a part of the defendant's investigation of the 100-member panel from which the 23 grand jury members were chosen that returned the instant indictment. Your Honor will remember that attached to their motion they had certain analyses of the 100-member panel: their occupation, race, religion.

THE COURT: Just a moment. The clerk has sent me exhibits in this case and parts of his original file, I have discovered just this morning, including the indictment.

Is that a part of your original file, Mr. Clerk?

THE CLERK: No, sir; that is a copy.

THE COURT: That is a copy?

THE CLERK: I have the original indictment.

MR. NORMAN: Excuse me, if your Honor please. Your Honor will find the statement tht Mr. Neal is referring to attached to our original motion o dismiss.

MR. NEAL: Yes, sir; Exhibit E.

MR. NORMAN: Exhibit E.

THE COURT: I was just coming to that.

This is a part of your original file, Mr. Clerk, I believe, is it not?

THE CLERK: Yes, sir.

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THE COURT: That is your original?

THE CLERK: Yes, sir.

THE COURT: Does this exhibit for the most part tell

*Transcript, Proceedings on Motion*

the whole story? Are you saying that the Court should read these transcripts in these various cases? Are you saying that as this time when you say you have stipulated that the records in these other cases will be treated as being evidence in this case?

MR. NEAL: Will be the record in this case with your Honor's consent, of course.

THE COURT: Maybe we can streamline this a little further. I am just wondering if, after all, this original motion with Exhibits A, B, C, D, E, F, and G does not give us a pretty fair picture of this whole thing. Are we going to have to sit here and listen to a lot of cumulative evidence on these things? Is that what your stipulation embraces here this morning?

MR. NEAL: No, your Honor. The government does not think that the motion there and the supporting papers do tell the whole story; however, we think the whole story can be—or the record can be made for the purpose of deciding this motion by referring to the records of these other cases.

For example, your Honor, you have three affidavits there, the affidavits of—

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THE COURT: Mr. Kenner—is that his name?

MR. NEAL: No, they are Exhibits G—Exhibit G.

THE COURT: Mr. Zeigler, I meant to say.

MR. NEAL: Mr. Zeigler, Mr. McMackin, and Mr. Polk. If your Honor please, in the cases I referred to, the combined cases of Bell—

THE COURT: Yes, sir.

MR. NEAL: — and Cole—these three affiants were put on the stand. The government, in that case—and the issue was exactly the same—stipulated that their affidavits might be taken as their direct testimony. Then the government cross-examined these three affiants, and we think that the

*Transcript, Proceedings on Motion*

cross-examination almost entirely changes the import of the affidavits.

THE COURT: You will want the benefit of that.

MR. NEAL: Yes, your Honor. That is what we stipulated in the record.

THE COURT: I understand that, but how much is there of that? Can we hear that this morning? Would it be burdensome on anyone to read that testimony in court this morning?

MR. NEAL: It is quite long, your Honor. It would take us, I would say, two hours to head the record; but we would just offer it as an exhibit.

. . . . .

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MR. NEAL: Your Honor, I believe we can do this: We have certain documents to submit to your Honor that would be in addition to the documents to submit to your Honor that would be in addition to the documents supporting the motion. If we submit these to your Honor, we think that will be the hearing on the matter insofar as the parties wish to make it.

If I could go through these and make the offers and certain stipulations—just brief stipulations—that we have agreed to that the Court may consider as facts, I believe we will have our record on the hearing. May I go through that then without referring to these prior cases?

THE COURT: The Court is not too sure that it understands exactly what you have in mind, but the Court understands, I believe, that you are now proposing to go ahead with this hearing without tendering the testimony or the cross-examination of these several witnesses you have mentioned.

MR. NEAL: No, we will tender that; but in this book form here (indicating) it probably would be easier for your Honor to read than to have it read on the stand.

*Transcript, Proceedings on Motion*

THE COURT: You are tendering that to the Court?

MR. NEAL: As an exhibit to the hearing today.

THE COURT: You are proposing, in addition, to introduce and to make reference to other documents?

MR. NEAL: Other documents, and that is all.

THE COURT: Let me see this transcript that you are talking about. Maybe it is not so—

(Document passed to the Court.)

THE COURT: This is cross-examination of the three witnesses whose affidavits appear already as exhibits to the defendant's motion.

MR. NEAL: As Exhibit G, I believe, your Honor.

THE COURT: Polk, McMackin, and Zeigler?

MR. NEAL: Yes, your Honor. I think there may be a brief question or two on direct, but it is essentially the cross-examination.

THE COURT: There is not too much of it, and the Court will have the opportunity here during the hearing today to examine this.

. . . . .

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THE COURT: The Court is on speaking terms with these matters, and I think I can digest these brief cross-examinations of the three witnesses during the day.

All right.

MR. NEAL: Could we make that, then, Exhibit 1 to the hearing on the motion to dismiss?

THE COURT: All right, sir.

MR. NEAL: With respect to that, your Honor, of course, it is understood by both parties that the affidavits of Zeigler, Polk, and McMackin and, of course, the cross-examination are limited to what the suggesters told them. I think that will be apparent from reading the affidavits and the cross-examination, that that is what they were testifying about—what they were told.



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Here is the thing that I would like to make Exhibit Number 2 to the hearing on the motion to dismiss, and I will explain Exhibit Number 2 to your Honor as to how it fits in.  
(Document passed to the Court.)

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. . . . .

MR. NEAL: Yes, sir. If your Honor will refer to Exhibit E attached to the defendant's motion to dismiss—

THE COURT: Yes.

MR. NEAL: — you will see what purports to be an analysis of the occupation, race, religion, sex, and labor affiliation of the 100 people whose names were drawn from the box that composed the panel from which then was taken to the grand jury. This Exhibit 2 is the underlying work  
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product of the defendant from which was made the analysis which is Exhibit E. The reason we are submitting this, with the consent of the defendant, is that we think that there are errors—inadvertent errors in the analysis that this will show.

THE COURT: Exhibit 2 is the detail on it?

MR. NEAL: The detail on Exhibit E. That is right. It was prepared by the defendant or someone working under his direction.

THE COURT: All right, sir.

. . . . .

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MR NEAL: Your Honor, as Exhibit 6, we would like to submit an affidavit of certain statistical material on the Middle District of Tennessee. It is taken from the 1960 United States Census, and we agree that the Court or the defendant may use the Census in any way they think proper. Basically it is a compilation of the counties in the Middle District of Tennessee—the total population over 21

*Transcript, Proceedings on Motion*

and the non-white population over 21. We ask that that be marked as Exhibit 6.

(The document referred to above, compilation of Middle-Tennessee counties, was filed as Plaintiff's Exhibit No. 6.)

MR. NEAL: As Exhibit 7, your Honor, we would like to submit Judge' Gray's charge to the grand jury that returned the instant indictment.

. . . . .

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MR. NEAL: Your Honor, Exhibit 7 is submitted with respect to ground number 8 of the motion to dismiss whereby the defendant contends that the grand jury was unfairly reassembled for consideration and that the Court failed in its duty to conduct a voir dire as to whether any grand jurors were biased or prejudiced. I, of course, add that this is the Court's charge to the grand jury when it was first assembled in January 1963. It was reassembled in—

THE COURT: December 6, 1963, is when this indictment was returned.

MR. NEAL: It was reassembled in December 1963. We do not say that that is the charge at the time it was reassembled; we say that it is the original charge when the grand jury was first empaneled.

THE COURT: The complaint is made that the Judge should have reassembled the jury to inquire with respect to any prejudices and to instruct them further with respect to any prejudices and to instruct them further with respect to newspaper publicity. Wasn't that it?

. . . . .

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MR. NEAL: The other thing we would agree to is this, that Mr. Osborn, the defendant here, was the attorney for P. 19

James R. Hoffa in the 1962 Hoffa trial that took place

*Transcript, Proceedings on Motion*

here in Nashville. The second thing that we agree to is that after the trial was over and the grand jury was impaneled to investigate certain allegations of obstruction of justice with respect to that Hoffa trial, that Mr. Osborn appeared as attorney for a number of witnesses called before the grand jury investigating possible obstruction of justice.

We also agree that Exhibit Number 8, which has been handed to me by Mr. Osborn and Mr. Norman, consists of newspaper articles appearing on the dates designated in the newspapers designated. Mr. Norman may want to supplement this, but I believe that this is in relation to ground 8.

. . . . .

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MR. NEAL: Your Honor, we have a couple of other things to add to the record, and I think that will be the conclusion of it.

We have been advised by the Clerk's office that when the grand jury which returned this indictment was reassembled in December, it was not recharged by the Judge. You have the original charge; there was not a recharge.

Is that correct?

MR. NORMAN: That's right.

MR. NEAL: We also would like to add as facts on the motion to dismiss these facts:

That the list of suggesters attached to the motion to dismiss in Exhibits A, B, and C, that those were the suggesters who actually returned names to put in the box. We submitted an additional list attached to Mr. Mizell's supplement affidavit—I have forgotten what number that is there. It is the large one—Mr. Mizell's and Mr. Climer's additional affidavit.

THE COURT: That would be Exhibit 3, I believe.

MR. NEAL: Exhibit 3 (sic) is Mr. Mizell's with the

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attachment and Exhibit 5 (sic) is Mr. Climer's. Those lists there, your Honor, are the lists of all the suggesters who

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were asked for names, and include those who did not reply or return any names. The list of suggesters then attached to Mr. Osborn's motion are the suggesters who actually returned names. The additional lists here on Exhibits 3 and 5 are the full lists of those who were asked for names, including those who returned no names.

The other fact that we would agree to is that the clerk and jury commissioner did not know all of the suggesters they relied upon—did not personally know all of the suggesters, and that once the names were returned, they made no further investigation to determine qualifications.

. . . . .

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**THE COURT:** The Court has the impression that the clerk and the commissioner have, in the last analysis, passed on the qualifications of these people before they go into the box. Am I in error about that? It seems to me that they said as much in their affidavits. Maybe I am in error. What about that?

**MR. NORMAN:** It is my understanding, if the Court please, that this record shows that they make no further investigation about them and that they approve them.

**THE COURT:** Are you gentlemen in disagreement

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about any of the material facts concerning this jury matter?

**MR. NORMAN:** No, sir; I do not think we are.

**THE COURT:** I am just wondering if we should quibble too much about the facts here. Are these legal matters that we are talking about or not?

**MR. NEAL:** I think so, your Honor. Let me say what



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I believe the— It is a delicate matter. Of course, there is a world of difference between the legal emphasis. I don't think there is any difference here on the basic or historical facts. The jury commissioner and the jury clerk have traditionally in this district used the suggester system for part of the names. Now, some of the names they get from the people they know themselves and know they are qualified. That is some of the names, but for the majority of the names, I think it fair to state, that go in the box, they rely upon suggesters who have returned names in the past (as the affidavits say) and whom they have seen and observed return the names of qualified people.

They pick for these suggesters people, they say, according to their experience in the community and their observation of prior juries, and so forth, who will most likely return qualified people and return a fair cross section of the community.

With this background, knowledge of the suggesters or most of them, they send out requests for names, and they send out with that in each case a letter stating in detail the qualifications for federal jury service, and ask them not to discriminate, to send a fair cross section, and to send

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qualified people. They send with it a form for the name to be put on and a certificate at the bottom.

When they get these names back, they take the names and put them in the box. I do not understand that they go out and make a further investigation. I do understand that they go over the list.

• • • • •

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**THE COURT:** Gentlemen, that brings us to this motion to suppress. Do you have some oral evidence on that or not?

**MR. NORMAN:** Yes, may it please the Court.

May I make this statement, if the Court please, that the

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motion is to suppress (1) the tape recording of a conversation had between the defendant and one Robert D. Vick on or about November 11, 1963; (2) the testimony of the said Robert D. Vick relating to the said tape-recorded conversation between the defendant and the said Robert D. Vick, and also the testimony of the said Robert D. Vick relating to conversations with the defendant occurring on or about October 31, November 3, and November 8, 1963; and (3) the statement by the defendant before the Honorable William E. Miller, United States District Judge, at his chambers on or about November 3, 1963.

With respect to the third or those, upon an examination

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of the authorities and the consideration of the law with respect to this, we have come to the judgment and conclusion that the proper time for that would be upon the trial of the cause if and when that was presented and that this would not be the proper time.

Therefore, we would ask the Court just to reserve that to the hearing.

Asto the other two, we wish to call the witness, Robert D. Vick, for testimony on that matter.

THE COURT: It occurs to the Court that if we are reserving a part of this to a hearing, that maybe we should reserve the whole thing under Rule 41, and that is the rule under which you are proceeding. The Court, in its discretion, may entertain questions of that kind at the hearing; and the rule provides for that. We do it frequently in my court. That is really the rule in my court.

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MR. NORMAN: May I intervene, and I might save time, if your Honor please? If your Honor will reserve the right

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for us to examine into these matters at the hearing, it will be all right.

MR. NEAL: At the trial?

MR. NORMAN: Yes, sir.

MR. NEAL: We will agree that they will not waive any rights as to any point here. As a matter of fact, Rule 12 (as your Honor knows), paragraph 4, provides that a motion before trial raising defense's objection shall be determined before trial unless the Court orders that it be deferred for determination at the trial of general issues.

MR. NORMAN: We do not want to waive our right.

MR. NEAL: We understand that.

THE COURT: That is clear enough that you are not waiving any right. As a practical matter, I believe that is the proper approach, gentlemen.

• • • • •  
**TESTIMONY ON MOTION TO SUPPRESS  
EVIDENCE AND EXCLUDE STATEMENT  
OF DEFENDANT  
DIRECT EXAMINATION**

**TESTIMONY OF ROBERT D. VICK**

BY MR. NORMAN:

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Q. What is your full name, please, sir?

A. Robert D. Vick.

Q. And where do you live, Ur. Vick?

A. 2103 Martha.

Q. And what is your business?

A. I am a policeman.

Q. With the Metropolitan ———?

A. Metropolitan Police Department, yes, sir.

*Testimony on Motions, Vick*

Q. You have been actively engaged as a policeman?

A. Yes, sir.

Q. Are you actively engaged as a policeman now?

A. No, sir.

Q. Are you still on the Police Department?

A. Yes, sir.

Q. Since when did you become inactive?

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A. I went—I am not exactly sure of the date, Mr. Norman, but it was in November I was put on special assignment to the Government.

Q. And have you done any work since that time for the Police Department?

A. No, sir.

Q. Or for anybody else?

A. No, sir.

Q. You have drawn your salary ———?

A. Yes, sir.

Q. — Every month?

A. Yes, sir.

Q. Mr. Vick, did you go to Mr. Tommy Osborn on October 28th and solicit employment of any kind?

A. Well, I don't know that I went on that date, Mr. Norman, but I did ———.

Q. Well, then, I will ask you when did you go to Mr. Osborn's office and solicit employment of any kind?

A. Well, Mr. Norman, I am not sure of the date. I talked to Mr. Osborn about some employment. I ———.

Q. When?

A. I am sure it was in October. I am not sure of the date.

. . . . .

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Q. Well, I will see if I can refresh your memory, then. When you went there in October—and as I understand



*Testimony on Motions, Vick*

from statements you have made, on October 28th seeking employment by Mr. Osborn, did you have a plan to pretend that you wanted to improperly approach a juror by the name of Ralph Elliott?

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A. Did I have a plan, Mr. Norman?

MR. NORMAN: Yes.

A. No, sir.

Q. Did you ever go to him with a plan to pretend that you were going to improperly approach a venireman by the name of Elliott?

A. We discussed it. I did not go to him with any plan that I had, Mr. Norman.

Q. Well, when was the first time you ever talked to him about Juror Elliott?

A. I believe that was in November, Mr. Norman.

Q. Of what year?

A. 1963.

Q. And where did you have that conversation with him?

A. In his office.

Q. Had you discussed the juror Elliott with anybody before you talked to Mr. Osborn about it?

A. No, sir.

Q. No living human being?

A. No, sir.

Q. The first time you ever discussed the juror Elliott was with Mr. Osborn when you went there in October of last year?

A. Now, John Polk and I had discussed the entire jury list, Mr. Norman.

Q. I am talking about Juror Elliott. Didn't ask —

A. But I don't recall that I discussed Juror Elliott.

Q. Did you ever talk about the Juror Elliott with anybody connected with the United States Government, particularly

*Testimony on Motions, Vick*

the Department of Justice, before you discussed it with Mr. Osborn?

A. I don't think so, Mr. Norman.

Q. Well, I wish you would try to remember and answer that one way or another, if you will.

A. Well, Mr. Norman, this juror of course I have discussed many times with the Department of Justice. It is very difficult. I am sure that I did not prior to the original conversation that I had with —

Q. Then, as I understand you, the first conversation you ever had about the Juror Elliott with Mr. Osborn was occasioned by Mr. Osborn, you had not discussed him with anybody connected with the Government?

A. I don't think I had, Mr. Norman.

Q. All right. Did you devise a plan to pretend to Mr. Osborn that you were going to talk to the Juror Elliott?

A. I did not devise any plan at all, Mr. Norman.

Q. Well, you propositioned him about talking to Elliott, didn't you?

A. No, sir, I did not.

Q. You mean he propositioned you about it?

A. Yes, sir.

Q. Did you pretend to him that the Juror Elliott was related to you?

A. Yes, sir.

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Q. Had you discussed your relationship, which you think was a second cousin, with the Juror Elliott, with anybody connected with the United States Government, and particularly the Department of Justice, before October when you discussed it with Mr. Osborn?

A. No, sir, I am sure I hadn't, Mr. Norman.

Q. Before you talked to Mr. Osborn in his office about

*Testimony on Motions, Vick*

the Juror Elliott, had you ever talked to any other person about seeing Mr. Osborn about the Juror Elliott?

A. No, sir, I don't recall as I had.

Q. Well, could you say positively that you had not?

A. Yes, sir.

Q. All right, sir. When you went to Mr. Osborn's office, did you intend to pretend you wanted to talk to the Juror Elliott, whether Osborn employed you or not?

A. No, sir.

Q. Only on — if he employed you, is that right?

A. I didn't pretend at that time to talk about any juror, Mr. Norman.

Q. Well —

A. Other than the ones he had hired me to investigate.

Q. I am talking about the Juror Elliott. When did you decide to pretend to Mr. Osborn that you were going to P. 177

talk to him?

A. May I hear your question again, Mr. Norman?

Q. When did you decide to pretend to Mr. Osborn that you were going to talk to the Juror Elliott?

A. After I had reported the original conversation Mr. Osborn had with me to the Department of Justice.

Q. Then you decided then on the plan to pretend to him taht you were going to do that?

A. No, I did not plan on anything, Mr. Norman. I told the Department of Justice that I would report any violations to them, and I did.

Q. Did you tell them that you were going to pretend to him that you were — did you tell the Department of Justice after you reported to them that you were going to tell Mr. Osborn that you were going to get in touch with the Juror Elliott?

A. Well, I don't recall that I told him —

Q. Did you intend to get in touch with the Juror Elliott-

*Testimony on Motions, Vick*

A. No, sir, I didn't.

Q. Well, it was pretense? You didn't mean to do it when you were telling Mr. Osborn that, did you?

A. No, sir.

Q. When did you decide to follow that pretense with him  
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and why?

A. Well, I will have to give a little long, lengthy answer, Mr. Norman.

Q. Give any answer you want to give.

A. All right. I reported by original conversation with Mr. Norman where this juror was discussed.

Q. No, not with me. You didn't have —

A. I mean with Mr. Osborn. I am sorry. No. I reported this to the Department by telephone.

Q. Who did you report it to?

A. Mr. Sheridan.

Q. Where was he—Mr. Sheridan?

A. Mr. Sheridan was in Washington.

Q. Where did you report to Mr. Sheridan?

A. Well, I reported to the Department of Justice.

Q. And you called him. Where did you call him?

A. Department of Justice.

Q. How did you know to call him there?

A. Well, I knew he was with the Department of Justice, Mr. Norman.

Q. Did you have his number?

A. I knew he was connected with the Department of Justice.

Q. Had you ever talked to him before?

A. Yes, sir.

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Q. Did you have arrangements to call him about this?

A. No, sir.

Q. You did not?



*Testimony on Motions, Vick*

A. He had a ——— he asked me to report any illegal things that I may know about, and I did.

Q. But this wasn't illegal, as you said yourself you were not going to see Juror Elliott, you were going to pretend to Mr. Osborn you were going to do it?

A. Going to get what?

Q. To Osborn, you were going to do it?

**FIRST CONVERSATION NO VIOLATION  
OF LAW**

MR. NEAL: Your Honor, I have to object to that since this is not being an orderly way of getting at Mr. Vick's testimony. And of course, then if Mr. Osborn wants to cross-examine him on it—this I cannot understand—*because the first conversation would have been the day that he reported to Mr. Sheridan* — (Emphasis added) would have been no violation of the law. I don't just understand the procedure.

THE COURT: Well ———

MR. NEAL: Mr. Norman is cross-examining here. I don't have any objection to him being put on to get Mr. Vick's testimony, but ought to get Mr. Vick's testimony and the facts in sequence.

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THE COURT: Well, this is a hearing on a motion out of the jury's presence to suppress the evidence with respect to this tape recording and other matters. And the burden in that connection is upon the defendant. And how he proceeds will be up to him, I would think.

MR. NORMAN: Yes, sir.

THE COURT: You will have the right to examine the witness further. But the Court knows absolutely nothing about this case, what the witness knows. And the Court is not able to direct counsel, even if it had a right to do so, in the procedure he follows. I don't believe I have.

*Testimony on Motions, Vick*

MR. NEAL: Your Honor, my point is this. I don't want to — we don't want to suggest to Mr. Normal or order the witness —

THE COURT: I understand.

Mr. Neal: — On cross-examining him. But it was unintentionally, at least I am sure, but at least misleading to me.

*The first conversation was not a violation of the law, the report to Mr. Sheridan — my understanding is it would be — unless there is ...*

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(Emphasis Added)

Is that —

MR. NEAL: Well, that seems to me to be logical, Your Honor. As I say, we could object, I guess, to the leading questions, since it is Mr. Norman's witness. But I understand the circumstances here, and I am not trying to restrict Mr. Normal to non-leading questions. But we are getting into the matter —

THE COURT: Well, I think your suggestion has merit. But the defendant has some latitude in this matter. And the Court is unable really to intelligently say how we should proceed because, as the Court says, the Court is wholly ignorant of what the witness knows, except what I

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read in some newspaper accounts and the consideration of motions here last month.

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BY MR. NORMAN:

Q. Mr. Vick, as I understand, you never intended to talk to the Juror Elliott?

A. That's correct, Mr. Norman.

Q. But you intended to leave Mr. Osborn under the impression that you would, is that right?

*Testimony on Motions, Vick*

A. That is correct, Mr. Norman.

Q. Why did you decide to do that? That is all I want to know.

A. Well, Mr. Norman, as I told you before, when I had

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talked to the Department of Justice, they had asked me to report anything that was an illegal — oh a violation of the law concerning jurors. I was then engaged in investigating some of the jurors.

BY MR. NORMAN:

Q. When did you decide, Mr. Vick, to pretend to Mr. Osborn you were going to approach the juror when in fact you were not?

A. After I had reported Mr. Osborn and my — the original conversation to the Department of Justice.

Q. To Mr. Sheridan?

A. Yes, sir.

Q. Did Mr. Sheridan tell you to continue that pretense?

A. No, sir.

Q. Did you tell Mr. Sheridan that you would pretend to Mr. Osborn that you would approach Juror Elliott?

A. No, sir, not at this time.

Q. You did not tell him that?

A. Not at this time, Mr. Norman, I did not.

Q. All right. Why did you pretend to Mr. Osborn that you were going to approach the Juror Elliott? What was your purpose in that pretense?

A. After I had telephoned Mr. Sheridan in Washington, he — as I have said, Mr. Norman, he asked me to report any violation that I — should appear and discuss, which I did. And I am not sure, but I believe that Mr. Sheridan said that he was coming to Nashville and that we would discuss it.

*Testimony on Motions, Vick*

My original conversation with Mr. Osborn, after he arrived, I reported to Mr. Sheridan.

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Q. Then, as a result of your reporting to Mr. Sheridan, you then decided to continue the pretending to Mr. Osborn.

A. Not at this time, Mr. Norman.

Q. Well, why did you pretend to Mr. Osborn you were going to talk to this juror when in fact you were not? What was your purpose in misleading him in that way?

A. Well, after Mr. Sheridan got to Nashville, Mr. Norman, I told him — Mr. Sheridan — that I would then be in contact with Mr. Osborn again.

Q. Did you tell him you were going to pretend to him that you were going to —?

A. No, sir, I did not.

Q. Did you tell him that you had already told Mr. Osborn that you were a cousin of Juror Elliott and that you were going to tell Mr. Osborn that you were going to see the Juror Elliott? Did you tell Mr. Sheridan that?

A. I told — I believe I did.

Q. What did he say?

A. He said that would I just play it by ear, so to speak, and continue discussions with Mr. Osborn and report it to him.

Q. Then he knew that you were pretending to Mr. Osborn that you were going to approach the Juror Elliott?

A. I don't know what he knew.

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Q. You had told him —?

A. Sir?

Q. You said you had told him?

A. Yes, we had discussed it.

Q. And he told you to continue on?

A. And at a later date he did know it.



*Testimony on Motions, Vick*

Q. And what day did you tell him?

A. Well, I didn't tell him. It wasn't a situation where you tell somebody, Mr. Norman.

Q. How did he know it if you didn't tell him?

A. Sir?

Q. How did he know it if you didn't tell him?

A. Well, he merely asked me, after we had some discussions later on in person, after he arrived back in Nashville, we had some discussions here in this building concerning this whole thing.

Q. Did you tell him ——?

A. I didn't tell him anything, Mr. Norman.

Q. Well, you just said you had some discussions?

A. I told him merely —— he asked me merely would I continue the conversations with Mr. Osborn and report them to him. And I said I would.

Q. And did you, too?

A. Yes, sir.

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Q. And you told him you were going to continue pretending to Mr. Osborn you would approach the Juror Elliott?

A. Yes.

. . . . .

Q. All right. I will ask you, did you go back to Mr. Osborn and pretend to him that you had talked to the prospective Juror Elliott?

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Osborn and pretend to him that you had talked to the prospective Juror Elliott?

A. Yes, sir, I did.

Q. Did you tell Mr. Sheridan that you were going to do that?

A. Yes, sir.

Q. Did he tell you to go ahead and do it?

A. Not in those words. He understood ——.

*Testimony on Motions, Vick*

Q. Well, what did he tell you?

A. He understood clearly that I was going to do it, yes, sir.

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Q. Well, you planned them with Mr. Sheridan, you told him you were going to pretend to him you had already talked to him, didn't you?

A. I had some meetings with Mr. Osborn. And after the appointment was made, I told Mr. Sheridan yes, sir.

Q. Did you ever tell Mr. Osborn or indicate to him in any way, shape, form or fashion in any of these conversations that you were working as a Government agent?

A. Mr. Norman, I did not tell Mr. Osborn that I had any connection with the Government.

Q. In other words, you just kept that completely from him, didn't you?

A. Yes, sir.

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Q. I will ask you if it was not your whole purpose in coming to Mr. Osborn's office to persuade him to agree to a deal you would pretend you would go to the Juror Elliott?

MR. NEAL: Ask which occasion, now. It is very important.

MR. NORMAN: All of them, just go any time on it.

MR. NEAL: Which time?

MR. NORMAN: From the time he talked to Mr. Sheridan.

MR. NEAL: Then after he talked to Mr. Sheridan.

MR. NORMAN: Yes, sir.

Q. From the time you talked with Mr. Sheridan, I mean, after — the whole thing — all of them — wasn't it in order to persuade Mr. Osborn to join in the pretense that you had about seeing Elliott?

*Testimony on Motions, Vick*

A. I never tried to persuade Mr. Osborn in anything, Mr. Norman.

Q. Well, why did you tell him then, that you had already been to see Elliott?

A. He had asked me to go see him.

Q. Well, did you lie to him?

A. Well, as I have previously said, Mr. Norman, I had

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no intention of seeing the juror.

Q. Well, why did you lie to Mr. Osborn about it?

A. This was ———

Q. (Continuing) — If you didn't have a plan to do it?

A. This was to reveal the plan to the Department of Justice, I suppose, Mr. Norman.

. . . . .

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Q. And did you have a conversation with Mr. Osborn on November 7, did you tell Mr. Osborn that you knew several people on the jury?

A. Yes.

Q. Did he ask you why you had't told him?

A. Yes.

Q. What did you say?

A. Well, I told him that I had previously told John Polk that I knew some people on this jury, in the conversation I had had with John, and I had assumed that John had told him, and he said that John had not told him.

Q. Mr. Vick, we have been talking about November 7, 1963, have you got the date in mind? That's the first conversation with Mr. Osborn?

A. That is right.

Q. Prior to that time you had called and asked for an appointment with Mr. Sheridan, is that correct?

A. Yes, sir.

*Testimony on Motions, Vick*

Q. Would it refresh your recollection to say that was about August 1963?

A. Yes, sir, it was in the summer time.

Q. And I believe he told you he was busy at that time and you called him later?

A. Yes, that is correct.

Q. And you called him again and asked for an appointment?

A. Yes, I believe that is correct.

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Q. At that time had Mr. Sheridan ever asked to talk to you?

A. No, sir, I don't think he had ever asked to.

Q. At some time in August you came down and did talk to Mr. Sheridan at your request, did you not?

A. Yes, sir, I did.

Q. At that time did you tell him — at this very first conversation you ever had with Mr. Sheridan, did you tell him that in the 1962 Hoffa trial here that Mr. Osborn had made an effort to bribe Mrs. D. M. Harrison of Lebanon? Or words to that effect?

A. Well, I told him about the extent that, in which I was involved.

Q. You told him that you and Ramsey had went to —

A. Yes, that is correct.

Q. Had went to talk to Mr. Beard about Mr. Beard going to Mr. Harrison?

A. That is correct.

Q. And that you understood that that was on Mr. Osborn's direction?

A. Yes.

Q. You gave that answer to questions when Mr. Sheridan asked you, when you asked for this appointment, and he



*Testimony on Motions, Vick*

asked you, "Do you know of any activities of jury tampering at the last trial?" is that correct?

P. 202

A. Yes, sir.

Q. And that's what you told him?

A. Yes, sir.

Q. And thereafter he asked you to report any illegal activities that you heard of?

A. Yes, sir.

Q. And specifically told you to report nothing else?

A. That is correct.

MR. NEAL: No further questions.

MR. NORMAN: One question, Mr. Vick, and think about this:

**REDIRECT EXAMINATION**

BY MR. NORMAN:

Q. I will ask you if you didn't become a government agent in May of 1963?

You understand every word I ask you in that question, don't you?

A. No, sir, I don't.

Q. Did you not become a government agent in May of 1963?

A. Well, I am not sure what becoming a government agent is, Mr. Norman.

Q. Did you start working on this plan that you have just talked about in May of 1963?

A. No, sir, I did not.

*Testimony on Motions, Lansden*

**TESTIMONY OF D. L. LANSDEN**

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the next witness, was first duly sworn, and examined and testified as follows:

**DIRECT EXAMINATION**

BY MR. NORMAN:

Q. This is Mr. D. L. Lansden.

Mr. Lansden, you are and have been for a number of years a member of the Nashville bar, have you not?

A. That is correct.

Q. And a resident of this community?

A. Yes.

Q. Mr. Lansden, state whether or not on November 16, 1963 — strike that.

May I ask: Do you know Tommy Osborn?

A. Yes.

Q. How long have you known him, Mr. Lansden?

A. I have known him a long time, since shortly after the end of World War II.

Q. Has your relationship with him been close?

A. Yes.

Q. Professional, and close personally?

A. That is correct.

Q. State whether or not on the 16th of November you learned that Tommy was involved in this matter down here in the Federal Court?

P. 207

A. That is right.

Q. With respect to the Hoffa jury?

A. I learned it, I assume it was the 16th, if it was a Saturday.

Q. Saturday?

A. The 16th is correct.

*Testimony on Motions, Lansden*

Q. I will ask you whether or not you and Mr. Raymond Denney, another member of the bar, who is sitting here in the courtroom, and I, had some conferences during that day with respect to this young member of the bar?

A. That is correct.

Q. I will ask you if you had an engagement that day, and if you didn't understand that Mr. Denney and I would accompany Mr. Osborn down to the Federal Court to try to determine some further information about the charge against him?

A. That's true.

Q. You did not accompany us?

A. No, I did not.

. . . . .

P. 208

A. All of us were in Mr. Denney's office. I do not remember Sunday Tommy being present in your office.

Q. Was there some agreement made among the three of us, that is you, Mr. Denney, and myself, with respect to seeing anybody about this matter?

A. Yes, I believe you called Mr. Hooker.

Q. Was there a discussion between us about that?

A. There was. And it was decided that if possible an appointment should be made with John, and the matter discussed, to see exactly what the situation was.

Q. Why was the decision made to discuss the matter with Mr. Hooker?

A. Well, as I recall, we understood that he was in the matter for the government and —

Q. Did you understand at that time that Mr. Hooker had taken some affidavits from witnesses with respect to this matter?

A. I was informed of that.

Q. All right. What was done and what took place, Mr. Lansden?

*Testimony on Motions, Lansden*

A. As I recall, you made arrangements to meet with John Sunday night in your office.

Q. And who was to be present?

P. 209

A. Raymond and you and I, and John Hooker, Sr.

Q. Did that four meet?

A. That meeting occurred, and as I recall it was around 5:30. I believe it was. John had been out to see his mother, and that was the reason the meeting was late. And I was trying to get away to go bird hunting.

Q. State whether or not preceding that meeting the three of us had been in conference with Mr. Osborn, and he was fully advised as to what was going to take place?

A. That is correct.

Q. All right. Go ahead from there, Mr. Lansden.

A. Well, we met in your office, the four of us. As I recall it, you opened the conversation with a statement in substance that we were not there to talk about Tommy's license, we were there to see what could be done to help him in his other problem, and that if it was anything John was not free to talk about, say so, and that would be the end of the conversation.

I can't pick this up with who says what in order, but I think I can accurately give the substance of what was said.

John stated first how surprised and shocked he was over what had happened. And we all agreed that we were surprised. And then John stated that he had either talked with Bobby Kennedy or had cleared it —

Q. That's the Attorney General of the United States?

P. 210

A. That's the Attorney General of the United States. I am trying to use his language. He didn't say the Attorney General; he said Bobby Kennedy, as I recall it. That he had either talked with him or cleared it with him. And that he



*Testimony on Motions, Lansden*

was authorized to speak for the Department, but was not authorized to speak for the Judges.

Q. He did say that he had been sworn in as an assistant to the Attorney General of the United States?

A. I can't be certain whether he did or not. He did say though that he was authorized to speak for the Department, could not speak for the Judges, did not know what the Judges' attitude would be.

And he said that if Tommy would come down here and make a full disclosure, he would recommend no prosecution.

At that stage I said, in substance, that, "You realize that that does not necessarily mean that he would involve Hoffa?"

John agreed with me.

I then stated that on that basis I would recommend that Tommy make a full disclosure. You and Raymond agreed with me.

Q. As a consequence, did we advise Mr. Osborn to come down and make the statement, on that condition?

A. Jack, I assume so. I went on to Fairfield, quail hunt-  
P. 211

ing. that night, and never did talk with Tommy. So I can't say what was advised Tommy. Of course, we all know that Tommy did subsequently come down, and I would assume that you and Raymond talked with Tommy after I left. But I did not.

Q. Did Mr. Hooker make any statement as to whether or not in his opinion he could control the prosecution of the matter?

A. He had stated he was authorized to speak for the Department, but not for the Court.

*Testimony on Motions, Denney*

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**TESTIMONY OF W. RAYMOND DENNEY**

The next witness, being first duly sworn, was examined and testified as follows:

**DIRECT EXAMINATION**

BY MR. NORMAN:

Q. State your full name for the record, please, sir.

A. W. Raymond Denney, D-e-n-n-e-y.

Q. Mr. Denney, you are and have been for many years a citizen and resident of this community?

A. Yes, sir.

Q. And been a member of the Nashville bar for how long?

A. Forty years.

Q. And engaged in active practice, and have been in the same office here?

A. Yes, sir.

Q. State whether or not Mr. Osborn was formerly a member of your firm.

A. Yes, sir.

Q. Mr. Denney, state whether or not on Saturday, November 16, you and Mr. Dick Lansden and myself were in the presence of Mr. Osborn after his alleged involvement in this matter became known to us?

A. Yes.

Q. I believe our offices are across the street from each other on Third Avenue?

P. 215

A. That is correct.

Q. You were present when I was called and advised about it for the first time, were you not, sir?

A. That's true.

Q. I will ask you if on that Saturday afternoon, if after

*Testimony on Motions, Denney*

you and Mr. Lansden, and Mr. Osborn and I, had talked during the morning, if at some time around noon you and I accompanied Mr. Lansden to the courthouse here seeking to find out some more of the specifics about this matter?

A. Accompanied Mr. Osborn to the courthouse?

Q. Excuse me. Did I use some other name?

A. You said Mr. Lansden.

Q. I beg your pardon. Mr. Lansden did not come with us, did he?

A. No, sir.

Q. You and Mr. Osborn and myself came down?

A. Yes, sir.

Q. I will ask you if upon the following day, Sunday, November 17, we were together during the afternoon and later on that evening?

A. Yes, sir.

Q. In one of the two offices?

A. Yes, sir.

Q. Were you present at the meeting which Mr. Lansden

P. 216

has just spoken of in my office in the late evening, when Mr. Hooker, Mr. Lansden, you and myself were present?

A. Yes, sir.

Q. Will you please state your version of what happened there from beginning to end, Mr. Denney?

A. You had made an engagement for Mr. Hooker to come to your office. I thought about five or 5:30, that Sunday afternoon. And we were there first, and Mr. Hooker came in. That is Mr. Lansden, you, and myself.

And after exchanging pleasantries, why, of course, this matter which we were there for came up.

Q. We three old ones had known each other for 40 years here in the practice, had we not?

A. Yes.

*Testimony on Motions, Denney*

I think some remark was made that there was probably 150 years of law practice in that office, and that we were old friends. That was made, too. We wanted to understand each other, that was made, too.

And Mr. Hooker graciously stated how much he regretted Mr. Osborn being in this difficulty that we are here about today. And he stated that he had talked to Bobby Kennedy. And I knew his connections with Bobby Kennedy, as did you, and Mr. Lansden, and his son's connection with him. And he felt that Mr. Hooker could help Mr. Osborn in regard to not being prosecuted. And the conversation entered into that line. It was more than what has been implied here by Mr. Neal, that he just felt sorry for him and would try to help him. He went farther than that. He stated that he had been sworn in as a Department of Justice special prosecutor, and he wanted to help him. Of course he did, I knew he did. And he stated that he had talked with the Attorney General, and that if Tommy would make a full disclosure—that's the only language I heard used—that he was not speaking for the Judges, but he was speaking for the Attorney General, that he thought he could save him from prosecution. And I believe Mr. Hooker will state that, too, if he gets on the witness stand.

Q. Mr. Denney—

A. He said, by the way, that neither he nor Mr. Neal—they were all sorry about it, and that they had—and that the Attorney General had no particular motive to pursue Mr. Osborn, they were after Mr. Hoffa.

And that was the background.

Q. Mr. Denney, I believe Mr. Lansden left us that evening and left the city?

A. Yes, but before he left I said to Mr. Hooker, friend



*Testimony on Motions, Denney*

of all of us, I said, "Now we have been old friends, and we must not have any misunderstanding," and I repeated what I have said here today. And Mr. Lansden called me out in the kitchen and said, "Don't press him too much.

P. 218

You will make him mad." And I said, "I want to understand him."

And that's exactly what happened, and I think Mr. Hooker will verify it if he takes the witness stand, except he don't know what Mr. Lansden told me in the kitchen.

Q. And Mr. Lansden left the city that night, did he not?

A. Yes, sir.

Q. And then state whether or not you and I repeated to Mr. Osborn the conversation that had taken place and advised him to go to the Judges?

A. He was waiting over there in mine and Mr. Osborn's office, across the street, and we went over there and reported it to him. And then the decision was made for Mr. Osborn to go and make the disclosure. Mr. Hooker made an arrangement to get hold of the Judge to have him come back from—

Q. New York?

A. —New York. I saw Mr. Hooker about noon that day and he said the Judges were coming in. And I thought the matter was closed out. I did ask Mr. Hooker if he could help him delay the disbarment until after the Hoffa case, and he said he would speak to the Judges, but certainly couldn't speak for them. And I had no hope he could do that.

MR. NORMAN: That is all.

*Testimony on Motions, Hooker*

**TESTIMONY OF JOHN HOOKER, SR.**

P. 225

the next witness, being first duly sworn, was examined and testified as follows:

**DIRECT EXAMINATION**

**BY MR. NEAL:**

Q. You are Mr. John Hooker, Sr?

A. Yes, sir, I am.

Q. You and I have been partners in several cases?

A. Yes, sir, for quite some time now.

Q. You are a special assistant to the Attorney General of the United States?

A. Yes, I am.

Q. And you were a special assistant to the Attorney General of the United States on November 17, 1963?

A. Yes, sir, commencing some time before that. I don't recall just when. But I was at that time.

Q. You had occasion at that time, I believe, to receive a telephone call sometime during that Sunday from Mr. Jack Norman?

A. I believe Mr. Norman called me and maybe also Mr. Osborn called out at my home. I think he did. And I went to Mr. Norman's office where I met Mr. Norman, Mr. Lansden, and Mr. Denney.

Q. Will you tell us what transpired?

A. Well, I told them first I would tell them anything I knew about the case. They said they already had the

P. 226  
facts, they wanted me to help them. I told them I would do anything I could to help him and I felt sure that you felt the same way.

Q. As a matter of fact, we talked about that and both agreed that we would do anything within our power to help Mr. Osborn, is that correct?

*Testimony on Motions, Hooker*

A. That's exactly right.

Now I don't recall honestly whether I said I had talked to the Attorney General of the United States about it or not. That had never been mentioned until today. And I don't have a firm recollection about that.

I probably had talked to him, but I don't remember having talked to him about any disposition of Mr. Osborn's matter.

I remember very definitely saying—and I have said this several times before—that I told these gentlemen that if Mr. Osborn would make a full statement of the facts, that I would do what I could to help him. Nobody ever called upon me from that time on down to the present to help him. But I made the statement that afternoon that I would help him any way I could.

. . . . .

**TESTIMONY OF JAMES F NEAL**

**CROSS-EXAMINATION**

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BY MR. NORMAN:

Q. Did Mr. Hooker recommend the prosecution?

A. I don't believe Mr. Hooker had ——— I believe we both took the same position that it was going to be done. We didn't object to it. I don't think he said, "We ought to prosecute" — Mr. Hooker, or not. Don't think Mr. Hooker said that. I think we both stated we would hate to see prosecution there.

Q. I am trying to get at exactly how it happened, getting here in court.

A. Yes.

Q. You did recommend to the assistant that you said had the right to authorize it, you recommend that there be a prosecution?

*Testimony on Motions, Neal*

A. Well, after the — it is hard for me to say you are recommending there be a prosecution. I didn't object to it. Put it that way. I don't think Mr. Hooker objected to it.

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**RULING ON MOTIONS**

**THE COURT:** In this connection, there seems to be some misunderstanding as to just what Mr. Hooker said to Mr. Osborn and his lawyer friends. But the Court is well satisfied, even assuming there was anything which resembled a promise of immunity—if that is the contention here, and the Court does not find that there was—the defendant made no statement to the judges as a result of any alleged promise which purported to cover his full connection with this matter. His original statement to the judges was nothing more than a denial of his participa-

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tion in it.

As the Court has said, what happened in this connection cannot be relied upon at this time as a basis for ruling the evidence in question inadmissible.

The Court is quite sure Mr. Hooker's alleged promise to do what he could in the circumstances — and that is about as far as he went, as the Court understands the proof in this connection — is not binding on the Court at this time.

Gentlemen, there is nothing here to suggest an entrapment in any form or any promise to defendant which he may rely upon to suppress any of the evidence in question. So the defendant's motion in all things is overruled.



*Testimony on Motions, Hooker*

**PROCEEDINGS AT THE TRIAL**

In the  
**DISTRICT COURT OF THE UNITED STATES**  
For the Middle District of Tennessee  
Nashville Division

Trial Transcript, P. 1

**UNITED STATES OF AMERICA**

**vs.**

**Z. T. OSBORN, JR.**

Nashville Criminal  
No. 13484

**BE IT REMEMBERED** That the above styled cause came on to be heard on this the 25th day of May, 1964, at nine o'clock A.M., in the United States District Court for the Middle District of Tennessee, Nashville Division, before the Honorable Marion S. Boyd, Chief Judge of the United States District Court for the Western District of Tennessee, sitting by designation, and a jury duly and regularly impaneled and sworn, when and where proceedings were had and evidence was introduced, as follows:

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**APPEARANCES:**

**For the Government:**

**MR. JAMES F. NEAL**

**and**

**MR. JOHN HOOKER, SR.**

**For the Defendant:**

**MR. JACK NORMAN, SR.**

**THIRD COURT DISMISSED**

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**MR. HOOKER:** If Your Honor please, the Government will dismiss the third count of the indictment.

**THE COURT:** All right, that is the one that relates to the witness John Polk?

**MR. HOOKER:** And Virgil Rye.

*Testimony of Guy W. Cooper*

**THE COURT:** All right.

**MR. HOOKER:** We will go to trial on Counts Nos. 1 and 2.

**TESTIMONY OF GUY W. COOPER**

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the next witness, being first duly sworn, was examined and testified as follows:

**DIRECT EXAMINATION**

**BY MR. NEAL:**

**Q.** Will you state your name, address, and occupation, please, for the ladies and gentlemen of the jury?

**A.** Guy W. Cooper. I live here in Nashville. I am the Chief Deputy Clerk of the District Court here in Nashville.

**Q.** Would that include clerk for both Judge Miller's Court at the other end of the hall, and the court here?

**A.** Yes.

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**By MR. NEAL:**

**Q.** Now, sir, will you tell us from looking at the exhibits here, was there a case, or indictment returned in this District in May of 1963, charging James R. Hoffa and approximately six others with obstruction of justice in connection with the prior Hoffa trial?

**A.** Yes, sir; there was.

**Q.** And what was the approximate date that indictment was returned?

**A.** May 9, 1963.

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**Q.** Then the case was pending against Hoffa and these

*Testimony of Guy W. Cooper*

others for obstruction of justice from May 9, 1963 until December 12, 1963?

A. That is correct.

Q. And it was pending in Courtroom No. 2 for trial?

A. That is correct.

Q. Now, was it set for trial for the October term, 1963?

A. Yes, it was, sir.

Q. Now, was there a jury list impaneled—or a prospective jury list impaneled for the October term?

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A. That is correct, sir.

Q. Do you have a copy of that?

A. Yes, sir.

Q. On that list was there a Ralph A. Elliott, of Springfield, Tennessee?

A. Yes, sir, there was.

Q. And to what courtroom—what courtroom was he a prospective juror for?

A. For Courtroom No. 2. He was on the regular jury panel of Jury No. 1, being Jury No. 5 for Courtroom No. 2.

Q. And that was the courtroom in which the Hoffa indictment was pending?

A. That is correct, sir.

Q. Now, was he on the October term of the prospective jury panel?

A. Yes, sir.

Q. Now, that Hoffa case was actually set for trial first October 14, 1963, was it not?

A. That is correct, sir.

OQ. And then there was a stay order, staying the trial?

A. That is correct, sir.

Q. And there was no resetting of the trial then?

A. Not to the best of my knowledge, sir.

Q. Now, Mr. Osborn, I believe also appeared as coun-

*Testimony of Guy W. Cooper*

sel for the defendant Hoffa in the second Hoffa case, is  
P. 84

that correct?

A. Mr. Osborn's name—Mr. Neal, I will have to answer that this way: Mr. Osborn's name is listed as one of the attorenyes for the defendant. Of course, I was not in Courtroom No. 2 at the time of any proceedings, so from my own personal knowledge, I could not answer that.

Q. But your records show that he was counsel for Mr. Hoffa?

A. That is correct, sir, the record shows he was attorney for defendant James R. Hoffa.

MR. NEAL: Would the Court indulge me just a moment? You may examine, Mr. Norman.

**CROSS-EXAMINATION**

BY MR. NORMAN:

Q. Mr. Cooper, just one question, please, sir.

With reference to Case No. 13,383, which I will refer to as the second case, I will ask you if from the time the indictment was returned, if it is not true that that case was not set during all of this time, but was subject to a stay order of the United States Supreme Court and wasn't set until after this Osborn thing all came up? Right or wrong?

A. There is a place in—there is an entry in here show-  
P. 85

ing where the case was set at one particular time. I will have to locate that.

This case—there was an order entered on July 29, 1963, by Judge Frank Gray, Jr., and the last paragraph in the order, it is ordered that the case be set for trial October 14, 1963.



*Testimony of Guy W. Cooper*

Q. And up until that time it had not been set?

A. No, sir.

MR. NORMAN: That is all.

BY MR. NORMAN:

Q. And that was stayed by the United States Supreme Court, wasn't it? It couldn't be tried?

A. That is correct.

**REDIRECT EXAMINATION**

BY MR. NEAL:

Q. Actually it was stayed by the Court of Appeals, was it not?

MR. NORMAN: But it was stayed.

. . . . .

**TESTIMONY OF ROSEMARY HOTCHKIN**

P. 87

the next witness, being first duly sworn, was examined and testified as follows:

**DIRECT EXAMINATION**

BY MR. NEAL:

Q. You are Mrs. Rosemary Hotchkin?

A. That is right.

Q. Mrs. Hotchkin, what is your present employment?

A. I am working for R. B. Parker, Jr.

Q. You were at one time employed as secretary to Mr. Z. T. Osborn, Jr.?

A. That is right.

Q. And this is the Mr. Osborn sitting in the court over here?

A. That is right.

Q. You were so employed in 1962?

A. Yes, sir.

*Testimony of Rosemary Hotchkin*

Q. And 1963?

A. Yes, sir.

Q. And I believe at that time the firm was the firm Denney, Leftwich and Osborn?

A. That is right.

Q. Now, are you acquainted with a man by the name of Robert D. Vick?

A. Yes, sir.

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Q. Was he employed by Mr. Z. T. Osborn in 1962?

A. I believe he was.

Q. Pardon?

A. I believe he was.

Q. In what capacity was he employed?

A. As I recall, it was to do a certain investigation.

MR. NEAL: I am not sure that every member of the court can hear you.

A. As I recall, it was to do certain investigations.

Q. To do investigation?

A. As I recall.

Q. That was in connection with the 1962 Hoffa trial here in Nashville, was it not?

A. Yes.

Q. And he was to do background investigation of the prospective jurors?

A. As I recall, yes, sir.

Q. And during 1962 you had occasion to see him?

A. Oh, yes.

Q. Where would you see him?

A. Mr. Vick would come into the office on occasions.

Q. The office of Mr. Osborn?

A. Yes, sir.

Q. And this was in 1962?

*Testimony of Rosemary Hotchkin*

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Q. All right. That is all right.

Now, was he also employed in 1963?

A. Yes, I believe he was.

Q. And again to run a background investigation on prospective jurors for the second Hoffa trial?

A. Well, I don't know if it were the jurors for the second Hoffa trial or not. Just what his capacity was, I don't know.

Q. But he was employed by Mr. Osborn in 1963 again?

A. Well, I believe he was.

. . . . .

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Q. During the early part of November, 1963 — can I — let me see. This was about three weeks after the Hoffa second trial was about to commence but it was stayed—the Court stayed the trial at that particular period?

A. Yes.

Q. Did you have occasion to see Mr. Vick in your offices or the offices of Mr. Osborn several times throughout that period?

A. Mr. Neal, I may have, but I don't really recall—recollect any certain dates that he may have been there.

Q. Well, excuse me, please.

A. I sit rather far back in the offices, and many, many people could have been in, you know, and I wouldn't have seen them.

Q. And during the fall of 1963—let's get a little bit more general—was Mr. Vick in the office of Mr. Osborn? Did you see him in the office?

A. Yes, I have.

Q. In the fall of 1963. Did you see him more than once?

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. . . . .

*Testimony of Walter J. Sheridan*

Q. Who was the bookkeeper?

A. Delores Richardson.

Q. Are you familiar with Mrs. Richardson's handwriting?

A. Yes, sir.

Q. I hand you what has been marked for identification

MR. NORMAN: Mr. Neal, we will agree and stipulate they will be put in evidence.

MR. NEAL: All right. Fine.

Then we offer Government's Exhibit 8 in evidence.

THE COURT: All right, let it be received in evidence.

(Government's Collective Exhibit 8 was received in evidence.)

MR. NEAL: I would like to pass these checks of Denney, Leftwich and Osborn to Robert D. Vick, beginning October 16, 1962, and continuing I believe until November 8, 1963, checks drawn to Robert D. Vick, as follows:

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**TESTIMONY OF WALTER J. SHERIDAN**

the next witness, having been first duly sworn, testified

**DIRECT EXAMINATION**

By MR. NEAL:

Q. You are Mr. Walter J. Sheridan?

A. Yes, sir.

Q. By whom are you employed, Mr. Sheridan?

A. Department of Justice.

Q. How long have you been employed by the Department of Justice?

A. Since January, 1961.

Q. Did you have occasion to be in Nashville during the year 1963?

A. Yes, sir.



*Testimony of Walter J. Sheridan*

Q. In what capacity?

A. Well, I was here in connection with the Grand Jury investigation concerning alleged jury tampering in the Test Fleet case.

Q. Alleged jury tampering in the Test Fleet case?

A. Yes, sir.

Q. That is the first Hoffa trial that occurred here in 1962, is that correct?

A. Yes, sir.

Q. And I believe that I asked you to come down?

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A. Yes, sir, you did.

Q. That investigation was ordered by Judge Miller, was it not?

A. Yes, it was.

MR. NORMAN: We except to that. He couldn't possibly know that. It is not relevant to any matter.

THE COURT: Objection overruled.

MR. NORMAN: Exception.

Q. Now, pursuant to that investigation, did you have occasion to meet—or have you ever met a man by the name of Robert D. Vick?

A. Yes, sir.

Q. Will you tell us what approximate date you first met him and what was the occasion?

A. As I recall, sometime in July or August, 1963, there was a proceeding going on here. I think it was a hearing in connection with the Hoffa case.

Q. Mr. Sheridan, I am not sure that every member of the jury can hear you.

A. (Continuing) I received a telephone call from Mr. Vick. And he asked if he could come in to see me.

And, inasmuch as the hearing was going on, I asked him to postpone coming in until after the hearing.

*Testimony of Walter J. Sheridan*

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When the hearing was over, he called again and asked if he could come in to see me.

Q. Now, at that time had you ever met Mr. Robert D. Vick?

A. No, sir.

Q. You did know that he was investigating for Mr. Osborn, did you not?

A. Yes, sir.

Q. And you did know that he had investigated in 1962, the jury?

A. Yes, sir.

Q. Hoffa jury?

A. Yes, sir.

Q. But at that time you had never met or talked to him?

A. No, sir.

Q. Did you ever ask him to come in to see you?

A. No, sir.

Q. All right. This was July or August, 1963, is that correct?

A. I think the first call might have been July. I think second call in August.

Q. And this is after the second indictment was returned against Mr. Hoffa, is that correct?

A. Yes, sir.

Q. Did Mr. Vick come in pursuant to this second phone

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call?

A. Yes, he did.

Q. And at this time did you have any conversation with him?

A. Yes, I did.

Q. Did he purport to give you some information?

A. Yes, sir.

*Testimony of Walter J. Sheridan*

Q. Would you give us the purported information?

MR. NORMAN: Your Honor, we except to that.

MR. NEAL: Withdraw the question. Withdraw the question. Withdraw the question.

Q. Did you ask him, Mr. Sheridan, to do anything yourself or become any employee of the Federal Government?

A. No.

MR. NORMAN: We except to this question.

That is not relevant.

THE COURT: Objection overruled.

He has already answered in the negative, I believe. But it is admissible.

Q. Your answer was no?

A. As to whether I asked him to be an employee of the United States Government?

Q. Yes, I will take that first. Did you ask him to become

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a employee of the United States Government?

A. No, sir.

Q. Did you ask him to do anything?

MR. NORMAN: We except to that, if Your Honor please.

A. During the—

THE COURT: Just a moment.

THE COURT: Objection overruled.

Objection overruled.

MR. NORMAN: Just a minute.

Objection overruled.

MR. NORMAN: Respectfully except.

A. (Continuing) During the conversation, I asked Mr. Vick, after he had told me that in his opinion there would be an effort made to—

MR. NORMAN: Now, if Your Honor please—

MR. NEAL: Maybe we had better not get into that.

*Testimony of Walter J. Sheridan*

Q. He tried to give you some information, is that correct?

A. Yes.

A. Yes.

Q. What do you say you told him?

A. I told him I was interested in information of illegal activity.

Q. Illegal activity?

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A. Yes.

Q. All right.

A. Shall I go on?

Q. Yes, please.

A. And he told me—

MR. NORMAN: We except, if the Court please, to any conversation between these two people out—

THE COURT: Objection sustained, if he is attempting or undertaking to relate a conversation with Mr. Vick.

Q. Don't relate what Mr. Vick told you.

Did you ask him to do anything?

MR. NORMAN: Well, if Your Honor please, that is getting half of it, the conversation he had with Mr. Vick. It is not competent. The conversation he had with Mr. Vick is just as incompetent as Mr. Vick's part of it.

THE COURT: Not necessarily at all, Mr. Norman. What this witness said and did is something separate and apart from any conversations he might have had with this party Vick.

He has testified that he did have a conversation with him, and that as a result of it he did certain things and

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gave certain instructions and said certain things. And those things are material and are admissible.

MR. NORMAN: We respectfully except.



*Testimony of Walter J. Sheridan*

**THE COURT:** The witness will not be permitted to testify with respect to any conversation he had.

**MR. NEAL:** Your Honor ———

**THE COURT:** What he did and what he said to Vick is material and is admissible.

**MR. NEAL:** Could we have the jury excused for a moment? I believe we could explain to everyone's satisfaction what we propose to do. But I wouldn't want to do it in the presence of the jury.

**THE COURT:** You mean you are doubtful about your procedure?

**MR. NEAL:** No, not at all. But I think it would satisfy Mr. Norman.

**THE COURT:** Well, suppose you just offer your—

**MR. NEAL:** Continue ———?

**THE COURT:** Mr. Norman, thinking about, now, out of the hearing of the jury—well, we can get along maybe.

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**MR. NEAL:** Well, I will continue, then.

**Q.** Did—

**THE COURT:** So far it is not—

**Q.** Tell us what you asked Mr. Vick to do, if anything, in this connection?

**A.** I asked him in the course of his activities he became aware of any information concerning illegal activities that I would like him to represent me.

**Q.** Did you ask him for any other information?

**A.** No, sir.

**Q.** Did you specifically tell him you were not interested in any other information?

**A.** Yes.

**Q.** You specifically told him you were not interested in anything other than illegal activities?

**A.** I did.

*Testimony of Walter J. Sheridan*

Q. Now, after that, after that occasion, did you have any occasion to see Mr. Robert Vick?

A. Yes, I think there were two or three occasions in this period August, September, 1963.

Q. Now, on these occasions, did you again advise him that you were interested only—

MR. NORMAN: Except to that as leading, if Your Honor please.

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Q. (Continuing)—illegal information?

THE COURT: Don't lead the witness. Ask him—

Q. What, if anything, did you tell him at that time?

A. Well, I can't say for certain. But on each occasion I told him this, that it was the understanding between us that I was interested only in any illegal activity that he might become aware of.

Q. And that was your continuing instructions to him?

A. Yes.

Q. Through the association?

A. Yes, sir.

Q. Now, sir, directing your attention to the date of November 7, 1963, did you receive any word from Mr. Robert D. Vick?

A. Yes, sir.

Q. Where were you?

A. Washington, D. C.

Q. Where was he?

A. He was here.

Q. In Nashville?

A. Yes, sir.

Q. And as a result of that information, what did you do?

A. I came to Nashville.

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Q. At that time, up until you received this telephone call

*Testimony of Opal Smith*

on November 7, 1963, you had always advised him that you were interested in nothing but illegal information?

MR. NORMAN: Except to that as repetition, if Your Honor please.

MR. NEAL: I will withdraw the question.

MR. NORMAN: It is four times he has said it.

MR. NEAL: I will withdraw the question. No further questions.

MR. NORMAN: We want, if Your Honor please, to reserve cross-examination of this witness and would like to inquire if he is going to remain in the city because it is going to be necessary for him to be available.

• • • • •

**TESTIMONY OF MISS OPAL SMITH**

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the next witness, being first duly sworn, was examined and testified as follows:

**DIRECT EXAMINATION**

BY MR. NEAL:

Q. You are Miss Smith, Opal Smith?

A. Yes, sir.

Q. What is your occupation, Miss Smith?

A. Official Court Reporter of the United States District Court, Middle District of Tennessee.

A. That is right.

• • • • •

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Q. And you do that in the other courtroom for Judge Miller?

A. That is right.

Q. Now, you were doing this in November of 1963, were you not?

A. I was.

*Testimony of Opal Smith*

**Q.** In November of 1963, particularly November 15, 1963, were you called upon to transcribe a matter that occurred at the Chambers of Judge William E. Miller?

**A.** I was.

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(Jury Excused By Court)

**MR. NEAL:** I will make a statement, Your Honor, as to what we propose to offer. Actually we can do this— with this witness we will just merely lay the foundation for the reading of a particular record.

**THE COURT:** Is that all you are proposing to do with this witness?

**MR. NEAL:** Yes, she will testify that she has taken this, compared it with the original notes, an electronic transcrip-

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tion, and as to the accuracy.

**MR. NORMAN:** We have no objection to that.

Our objection will come with the offer of introduction.

**MR. NEAL:** Since the jury is out, we will propose to offer the transcription, the statements of questions and answers of defendant Osborn before Judges Miller and Gray, in the Chambers of Judge Miller, on November 15, 1963, from 3:05 p.m. until 3:25 p.m.

**MR. NORMAN:** What is the relevancy of this? What do you insist is the relevancy of this statement? I am not talking about the other one.

**MR. NEAL:** This will be a denial, a false exculpatory statement, Your Honor. It will be a denial by Mr. Osborn that he has ever had a conversation with anyone.

**MR. NORMAN:** You can't impeach him at this time. There is nothing to impeach yet.

**MR. NEAL:** May it please the court—we know that case on point.



*Testimony of Opal Smith*

What we offer to do is this, Your Honor: We offer to read to the jury the false denials of Mr. Osborn that he

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had ever had a conversation with any person with respect to tampering with a juror in the forthcoming, that is the 1963, Hoffa trial. He was asked, he was warned, advised of his rights, he said of course he knew he had a right to remain silent and of course he had a right to an attorney. He was then asked questions and he gave answers, and he stated, for example, that he had never had any conversations with anyone with respect to going and talking to a prospective juror in the forthcoming, second, Hoffa case.

Now, this is in regard to Count One, Your Honor. We allege there that he corruptly endeavored to obstruct justice, in that he asked Vick to go contact prospective juror Elliott and offer him \$5,000 if he got on the jury, and \$5,000 if he would vote for acquittal.

Now, we propose here to show Your Honor that he was asked, after being advised whether he had any such conversation, we propose here, and throughout, to prove that he denied falsely that he had ever had any conversation with anyone about contacting the prospective juror and offering him an money, and specifically denied that he had had any conversation with anyone about prospective juror Vick—I mean prospective juror Elliott. Excuse me, Your Honor.

THE COURT: The Court has some questions on that, and has seen some exhibits in connection with motions we have heard in this proceeding.

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If the Court recalls correctly, Mr. Osborn went to Judge Miller's Chambers on more than one occasion.

MR. NEAL: Yes, Your Honor, we propose to offer all of them.

*Testimony of Opal Smith*

**THE COURT:** On one occasion he specifically requested permission to come. Is this the one?

**MR. NEAL:** No, Your Honor, this is the first one when he was called in.

**MR. NORMAN:** This is the second one that the court has in mind where he specifically requested to come and make a statement.

**MR. NEAL:** It is actually third, I believe, when he appeared before Judge Gray and asked for further amplification of charges.

**THE COURT:** Let's hear from defense counsel. Why wouldn't that be admissible, Mr. Norman?

**MR. NORMAN:** May it please the court, at a later date in the trial of the cause, this may become competent to impeach the witness after he has made a denial. There has been no proof that he has had any relationship with Vick in this case in any way, shape, form or fashion. He has not testified. There is nothing to impeach him with. The only purpose of presetting this testimony would be to impeach the defendant's testimony.

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**THE COURT:** Not necessarily. There is a rule which governs exculpatory statements, isn't there?

**MR. NORMAN:** But no basis has been laid for that. Exculpatory statements for what?

No case has been made against him of any kind. No allegation that he has, up until this point.

**MR. NEAL:** Your Honor—

**MR. NORMAN:** All this is purported to show is that he may have.

**MR. NEAL:** Your Honor, we can only put on our proof one point at a time. We propose to show now—and we propose to show consecutively, I suppose for the next hour—we propose to show that he made the false exculpatory

*Testimony of Opal Smith*

statements before Judge Miller and Judge Gray that he had any conversation with a prospective juror Elliott, and that he had never had any conversation with anyone about the prospective juror Elliott.

Now, the law is clear that an exculpatory statement is admissible. We propose to follow that with testimony about his request to appear before Judge Miller, and admitted that his statements were inaccurate.

**MR. NORMAN:** We further object to this testimony  
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because it resulted from this tape recording which was all obtained illegally, and should be denied for that reason.

**THE COURT:** Well, would now be a good time to go into your motion to suppress or not, on the whole thing? I am just wondering, without attempting to interfere at all with either side, with what you are proposing to do.

We do have a motion to suppress the evidence with respect to the tape recording, and all that went on in Judge Miller's chambers, and I am thinking about expediting now. Can we go into all of that at one time here now?

**MR. NEAL:** Your Honor, the Government is ready to go into it at any time. I think we agree that this particular item here is not involved in that, but we are satisfied in going into it at any time.

**MR. NORMAN:** This resulted from the tape recording, too.

**MR. NEAL:** I don't think he was aware of the tape recording at that time.

**MR. NORMAN:** It doesn't make any difference whether he was aware of it or not, if that's where you got it.

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**MR. NEAL:** Shall we excuse Miss Smith for the time being?

*Testimony of Guy W. Cooper, Recalled*

**THE COURT:** Well, she is here to introduce this transcription.

**MR. NORMAN:** There will be no question about the transcription.

**THE COURT:** And they may be offered for purposes of identification at this time, subject to a later ruling by the Court. Is that the proposition gentlemen?

**MR. NORMAN:** Yes, sir.

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**GUY W. COOPER RECALLED**

having been previously sworn, was recalled, was examined and testified as follows:

**DIRECT EXAMINATION**

**BY MR. NEAL:**

**Q.** Mr. Cooper, you testified previously, and are still under oath.

**A.** Yes, sir.

**Q.** You are the man who testified that he was the chief deputy clerk of the United States District Court?

**A.** Yes, sir.

**Q.** And have been for some more than two years?

**A.** Yes, sir.

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**Q.** Mr. Cooper, did you receive into your possession from the Court, or as a part of the Court, certain tape recordings?

**A.** Yes, sir.

**Q.** When did you receive those?

**A.** They were filed November 20, 1963.

**Q.** And I believe that the Court received those from William Sheets, did it not, special agent?

**A.** These were filed as an exhibit in a hearing before the Court.



*Testimony of William L. Sheets*

Q. I see. And they have been in your custody ever since?

A. That is correct, sir.

Q. Have you tampered with them, or made any marks, or anything else on the tape recordings?

A. No, sir.

Q. Since they have been in your possession?

A. No, sir.

Q. And they have not been out of your possession ever since they were made exhibits to certain court proceedings on November 19?

A. On the date they were filed, November 20, 1963, they have been in the vault in the Clerk's office, and as far as I know, no one has bothered them.

\* \* \* \* \*

**TESTIMONY OF WILLIAM L. SHEETS**

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the next witness, being first duly sworn, was examined and testified as follows:

**DIRECT EXAMINATION**

BY MR. NEAL:

Q. Will you state your name and your address and occupation, please?

A. William L. Sheets, S-h-e-e-t-s, special agent, FBI address 1930 Castleman Drive, Nashville.

Q. How long have you been a special agent of the Federal Bureau of Investigation?

A. About 24 years.

Q. Where are you stationed now?

A. In Nashville.

Q. How long have you been stationed in Nashville?

A. Approximately ten years.

Q. Are you acquainted with the defendant in this case, Z. T. Osborn, Jr?

*Testimony of William L. Sheets*

A. Yes, sir.

Q. Will you point him out, please?

A. He is sitting with Mr. Norman.

MR. NEAL: Let the record show the witness pointed out the defendant.

BY MR. NEAL:

Q. Are you familiar with a man by the name of Robert

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D. Vick?

A. Yes, sir.

Q. When did you first meet Mr. Vick?

A. On November 8, 1963.

Q. On November 8, 1963?

A. Yes, sir.

Q. How did you happen to meet Mr. Vick on November 8, 1963?

A. I met him in this building on the 8th floor.

Q. On the 8th floor?

A. Yes, sir.

Q. What happened then?

A. He was introduced to me by Mr. Walter Sheridan. And I put a tape recorder on him.

Q. Put a tape recorder on him?

A. Yes, sir.

Q. Did you strap a tape recorder on him?

A. Yes, sir.

Q. Tell us just how that was done.

A. Well, the tape recorder is a miniature type recorder, approximately five or six inches long and about two inches thick, and first I taped the recorder together so it would not come open; then I taped it to his back by means of surgical tape.

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Attached to the recorder are two microphones, which

*Testimony of William L. Sheets*

are concealed underneath the clothing. One was placed approximately here (indicating), and one here (indicating). The recorder is activated by off-on switch, which was placed in Mr. Vick's pocket.

Q. In other words, he could turn the recorder on or turn it off?

A. Yes, sir.

Q. By placing a switch in his pocket. And he had speakers under his clothes?

A. Or microphones.

Q. Or microphones, rather, to pick up the voice?

A. Yes.

A. Yes.

Q. And the recording machine was taped on his back underneath his clothes?

A. Yes, sir.

Q. What time did you do this on November 8, 1963?

A. I don't recall exactly but by referring to notes I made on that occasion, I could tell you.

Q. Did you make the notes then?

A. Yes, sir.

Q. Refer to them, please.

A. The recorded was installed at 4:18 p.m.

Q. All right, sir. And did Mr. Vick leave the building

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at that time?

A. Yes, he did.

Q. Did you have occasion to see him again on that date?

A. Yes, I saw him at 4:50 p.m. the same date, talking with Mr. Osborn, in front of Mr. Osborn's office at 218 Third Avenue North, in Nashville.

Q. Let me see. On November 8, at 4:18 p.m., you strapped this recorder on Mr. Vick, is that correct?

A. Yes, sir.

*Testimony of William L. Sheets*

Q. And then at 4:50 p.m., or some 32 minutes later—

A. Yes, sir.

Q. You saw him talking to Mr. Osborn, the defendant here?

A. Yes, sir.

Q. In front, on the sidewalk in front of Mr. Osborn's office, is that correct?

A. That is correct.

Q. You taped the recorder on here in the building?

A. Yes, sir.

Q. In this building?

A. Yes, sir.

Q. And then you—32 minutes later you saw him in front, talking to Mr. Osborn, in front of Mr. Osborn's office?

A. Yes, sir.

Q. Where is Mr. Osborn's office?

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A. 218 Third Avenue North, in Nashville.

Q. Did you see him again on that day?

A. I met Mr. Vick at 5:14 p.m. at the rear of this building.

Q. That's approximately 24 minutes after you had seen him talking to Mr. Osborn in front of Mr. Osborn's office?

A. Yes, sir.

Q. What did you do then?

A. I instructed him to deactivate the recorder and accompanied him to the 8th floor of the courthouse where I removed the recorder.

Q. You instructed him to deactivate the recorder?

A. Yes, sir.

Q. What does that mean?

A. Turn it off.

Q. And then you accompanied him up in this building?

A. Yes, sir.



*Testimony of William L. Sheets*

Q. Did you take the recorder off of him at that time?

A. Yes, sir.

Q. And I assume you opened the recorder up?

A. Yes, sir.

Q. And was the tape in there, inside?

A. Yes, sir.

Q. Now, when you taped the recorder on him at 4:18 in this building, did you tape it in such a manner that you

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could determine whether or not it had been tampered with?

A. Yes, I believe I could.

Q. And you placed it on him?

A. Yes, sir.

A. And you removed it yourself?

A. Yes, sir.

Q. Now, when you removed it at 5:15 p.m. in this building, had it been tampered with?

A. I do not believe it had.

Q. When you took it off, you took the recording machine off of him, off his back and you opened it up, what was the condition of his recording?

A. It was apparent there had been a malfunction of the machine, in that the tape did not take up on the take-up reel.

Q. All right. The machine did not work, is that correct?

A. Yes, sir.

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Q. When was the next time you saw Mr. Vick?

A. The following day, on November 9, 1963.

Q. On November 8, 1963, was Friday, was it not?

A. Yes, sir.

Q. And that's when you first put the tape on and took it off?

A. Yes, sir.

*Testimony of William L. Sheets*

Q. November 9 would have been the next day, Saturday, November 9, 1963, is that correct?

A. Yes, sir.

Q. When did you see Mr. Vick on that occasion?

A. I installed a recorder on Mr. Vick at 1:30 p.m.

Q. 1:30 p.m. where?

A. On the 8th floor of the U. S. Court House.

Q. All right, sir. Did you again put it in the same manner you have indicated with the recording machine in the rear under his coat, and the microphones in front?

A. Yes, sir.

Q. And the button to turn it on and off in his pocket?

A. Right.

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Q. The same type of recorder?

A. Yes, sir.

Q. You put that on Mr. Vick at 1:30 p.m. in the Court House, is that correct?

A. Yes, sir.

Q. Did Mr. Vick leave the Court House at that time?

A. He left the Court House at 1:40 p.m.

Q. Did you have occasion to see Mr. Vick thereafter on this day, November 9, 1963?

A. Yes, sir, at 2:30 p.m., I removed the recorder.

Q. One hour later, one hour from the time you put it on you removed it, is that correct?

A. Approximately, yes, sir. Exactly.

Q. Did you again put it on in such a manner that you could determine whether it had been tampered with?

A. Yes, sir.

Q. Had it been tampered with?

A. No, sir.

Q. On this occasion did you listen to the recording?

A. Yes, sir.

*Testimony of William L. Sheets*

Q. Was there any voice of the defendant on the recording?

A. No, sir.

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A. I saw Mr. Vick again on November 11, 1963.

Q. At what time of the day?

A. At 9:25 a.m. the recorder was installed on Mr. Vick at the 8th floor of this building.

Q. At 9:25 a.m. on November 11—now this is Monday, Armed Forces Day, I believe, is that correct?

A. Yes, sir.

Q. At 9:25 a.m. you put a recorder on Mr. Vick?

A. Yes, sir.

Q. In this Court House?

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A. Yes, sir.

Q. Now, how did you put this on him, this recorder on him?

A. In exactly the same manner as I had done on the two other occasions.

Q. With the recording machine behind in the rear, at his back, underneath his coat?

A. Yes, sir.

Q. And the microphone over underneath the coat in front?

A. Yes, sir.

Q. And the on and off switch in the pocket?

A. Yes, sir.

Q. Now, did you tape this in such a manner that you could determine whether it had been tampered with between the time you put it on and the time you took it off?

A. Yes, sir.

*Testimony of William L. Sheets*

Q. All right. You put this on him in that manner on November 11, at 9:25 a.m., here in the Court House?

A. Yes, sir.

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Q. Did you see him again on that day?

A. He re-entered the building at 11:07 a.m.

Q. At 11:07. Now, that's an hour and nine minutes after he left the building with the recorder, is that correct?

A. Yes, sir.

Q. Pardon me?

A. Yes, sir.

Q. What did you do then?

A. I accompanied him to the 8th floor and removed the recorder at 11:10 a.m.

Q. Did you take anything out of the recorder?

A. Yes, I took the spool of tape out, the roll of tape.

Q. All right. Now, what did you do with the roll of tape?

A. I took it to Washington, D.C., and personally delivered it at the FBI Laboratory to special agent Robert P. Slager, who is assigned to the FBI Laboratory.

Q. When did you do this?

A. At 10:30 p.m. on the night of November 11.

Q. All right. You gave this recording, the same as you took out of the recording machine you put on Vick, you gave it to Mr. Slager of the FBI?

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A. Yes, sir.

Q. In Washington?

A. Yes, sir.

Q. Did you receive the tape recording back from Mr. Slager?

A. Yes, sir.

Q. Could you tell it was the same tape recording?

A. Yes, sir.



*Testimony of William L. Sheets*

Q. All right. What did you do with it then?

A. I brought it back to Nashville.

Q. All right. What happened to it then?

A. I made a transcription of it, and a few days later, I delivered it to Judge Miller, at a —

Q. On November 19 or 20th, did you deliver it to Judge Miller?

A. Yes, sir.

Q. Did it stay in your possession from the time you took it off of Vick, on November 11, until you delivered it to the possession of the Court, or Judge Miller, on November 19 or 20? Did it stay in your possession all the time with the exception of the time it was with Robert Slager of Washington, is that correct?

A. That is correct.

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BY MR. NEAL:

Q. Now, sir, did you receive anything else from Mr. Slager? You turned this original tape recording over to him in Washington?

A. Yes, sir.

Q. On November 11. And you received it back when?

A. The following day.

Q. When you received this original back from him, did you receive anything else from him?

A. I received two copies, a filtered copy, and a direct copy.

Q. You received a filtered copy?

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A. Yes, sir.

Q. All right. I show you Government's Exhibit No. 11, and ask you if that is the filtered copy you received?

(Document handed to the Witness.)

A. It is.

*Testimony of William L. Sheets*

Q. Now, has that been in your possession—how long has that—did you get that back from Mr. Slager?

You got that from Mr. Slager?

A. I did.

Q. Did you keep it in your possession?

A. Until it was introduced into the court records.

Q. On November 19 or 20?

A. Yes, sir.

Q. And that remained in your possession until then?

A. Yes, sir.

Q. Now, Mr. Sheets, you said that you took the recording off of Mr. Vick on November 11, is that correct?

A. Yes, sir.

Q. Did you listen to the recording, Government's Exhibit No. 10?

A. Yes, sir.

Q. Are you familiar with the voice of Defendant Osborn?

A. Yes, sir, I have known Mr. Osborn about 20 years.

Q. You are familiar with his voice?

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A. Yes, sir.

Q. Are you familiar with the voice of Robert D. Vick?

A. I am now, sir.

Q. All right. Now, did you recognize any voices on the recording, Government's Exhibit No. 10?

A. I recognized the voice of Mr. Osborn, and the voice of Mr. Vick.

Q. You recognized them both?

A. Yes, sir.

Q. Now, did you make any transcription, written transcription of what you heard on the tape recording, Government's Exhibit No. 10?

A. I did.

*Testimony of William L. Sheets*

Q. On this written transcription, did you indicate who was speaking at what particular time?

A. Yes, sir.

Q. How did you do that?

A. I denoted by name the person speaking.

Q. In other words, if somebody had said, "Good morning, how are you this morning?" and you recognized the voice as being Robert D. Vick, you would have put Vick, colon, and then, "Good morning, how are you this morning?"

A. Yes, sir.

Q. And when you heard Mr. Osborn's voice, did you do

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that the same way? Did you put Osborn, and then whatever he said?

A. Yes, sir.

Q. You made a transcription of Government's Exhibit No. 10, the tape recording?

A. Yes, sir.

MR. NEAL: I ask that this be marked as Government's Exhibit No. 12.

(Government's Exhibit No. 12 was marked for identification.)

BY MR. NEAL:

Q. I show you what has been marked for identification as Government's Exhibit No. 12, and ask if you recognize that?

A. This is a 10-page transcription that I made of the tape recording of the November 11 conversation.

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Q. You made this transcription?

A. Yes, sir.

*Testimony of William L. Sheets*

Q. Government's Exhibit number 12, by listening to what is on the tape, Government's Exhibit number 10, is that correct?

A. Yes, sir, together with ———

Q. And this is ———

A. (Continuing) ———together with the filtered copy.

Q. Beg your pardon?

A. Together with the filtered copy.

Q. You listened to both of them?

A. Yes, sir.

Q. Is that an accurate written transcription of what was on Government's Exhibit number 10?

A. It is.

Q. And the voices on it are those of Robert D. Vick and the defendant Osborn, and you have indicated which is which by the names preceding what is said, is that correct?

A. Yes, sir.

MR. NEAL: May I ask that the reported mark each of these as Government's Exhibit number 12?

We have several copies.

. . . . .

**CROSS-EXAMINATION**

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BY MR. NORMAN:

Q. Bill, you have known Tommy a long time, haven't you?

A. About twenty years, Mr. Norman.

Q. You have visited in his home as a friend, and he has visited in yours?

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A. Not actually.

Q. Not actually?

A. I don't believe ———



*Testimony of William L. Sheets*

Q. How about it? What do you mean not actually? If you have, you have. And if you haven't, you haven't. Which one?

A. I don't recall visiting in the home of he or myself. If so, it happened about twenty years ago.

Q. Well ———

A. (Continuing) But we have been close friends for years.

Q. Well, he was District Attorney down here. You worked with him on many, many cases, didn't you?

A. Yes, sir.

Q. When did you first meet Mr. Walter Sheridan?

A. It must have been in the fall of 1962.

MR. NORMAN: Yes.

A. (Continuing) As a matter of fact, it was in October.

Q. He didn't go to work — he is kind of a new man with the Department of Justice. He didn't go until 1961 under the Kennedy administration, did he?

A. I don't know, Mr. Norman.

Q. Had you ever known him before 1961, connected with the Department of Justice in any way?

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A. No, I hadn't known him prior to October of 1962.

Q. Yes, sir. Well, I believe you say you didn't know Vick prior to November 8th—Friday, November 8th, 1963?

A. That's right.

Q. Did you know he was a policeman? Had you known him as a policeman?

A. No, sir.

Q. The short time he had been over there?

A. No, sir.

Q. You hadn't known him at all?

A. I hadn't met him, as far as I know.

Q. And no one here introduced you to him? It was Mr.

*Testimony of William L. Sheets*

Sheridan from Washington that introduced you to him first, wasn't it?

A. Yes, sir, as I recall.

Q. And when Mr. Sheridan introduced you to him, why did he tell you he was introducing him to you?

A. Well, he told me that he had some information ———.

Q. He wanted you to get?

A. I don't know whether you want me to tell you this or not. Mr. Osborn was not present. But he told me Vick had some information that should be investigated.

Q. And where did this tape come from? Did you have that or Mr. Sheridan have it?

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A. We had this. It was sent down by the FBI laboratory.

Q. When was it sent down?

A. I believe about September of that same year.

Q. Sent down from Washington, the laboratory of the FBI?

A. Yes, sir.

Q. Did Mr. Sheridan have that sent down, or do you know?

A. I don't believe he did.

Q. All right. Well, anyway, it was sent down, then, to you; you didn't have it in your office until then, in September?

A. That is right.

Q. Well, Mr. Sheridan asked you to rig Mr. Vick up with this contraption?

A. Yes, sir.

Q. And he told you, of course, it was a man who had been your friend and you had known him twenty years that he wanted to set him up to?

A. Well, I don't know whether he knew it, but I knew it.

*Testimony of William L. Sheets*

Q. I say, you knew it?

A. Yes, sir.

Q. So you took this fellow and strapped it on his back

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where you understood you were going to send him up to Mr. Osborn—Tommy Osborn's private office?

A. That is my understanding he was going to Mr. Osborn's office.

Q. Is Mr. Sheridan superior to you? Do you take —— I don't mean anything wrong about this. I don't know the rank. Did he have authority to come in and instruct you to take this action?

A. Well, Mr. Sheridan directed the investigation as a representative of the Department of Justice.

Q. I see. Well, did Mr. Sheridan stay here or did he turn the matter over to you from then on with reference to these tapes?

A. Oh, he remained here.

Q. He remained here with you. When Vick would go up and come up, he would report back to you and Mr. Sheridan?

A. Yes, sir.

Q. I see. You hadn't said whether he was here when he came. You said, "He came back and I took the tape off of him." I didn't know whether Mr. Sheridan was there at that time.

A. Yes. I believe Agent Steele of the FBI and Mr. Sheridan was present.

Q. Now, then, the first time you sent him up there, he

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came back and he didn't have what you all wanted, so you had him come back the next day and rigged him up again and sent him up again, is that right?

*Testimony of William L. Sheets*

**MR. NEAL:** We object to that, Your Honor, as to what he wanted. It is certainly argumentative.

**Q.** Why did you send him back the second day after he came back first if he had what you wanted?

**MR. NORMAN:** If they object to it ———

**Q.** (Continuing) ——— I take it the reason you sent him back there ———

**A.** Well, Mr. Norman, I didn't send him back.

**Q.** Well, I thought you said ——— Well, did Mr. Sheridan?

**A.** I presume so.

**Q.** You know if nobody was there but you, Steele and Sheridan, you are bound to know which one sent him up there.

Which one of you did?

**A.** Well, I would say Mr. Sheridan did.

**Q.** That is what I thought. Well, why did he send him back the second time? You didn't get Mr. Osborn's voice, as I understand, on the first day, did you?

**A.** No, sir.

**Q.** So you rigged him up and sent him back the second

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day, just like I said, didn't you?

**A.** He went back the second day.

**Q.** Well, didn't you strap them on him the second day?

**A.** Yes, sir.

**Q.** All right. Now, when he came back the second day, did he have Mr. Osborn's voice on it?

**A.** No, sir.

**Q.** So you rigged him up and sent him back the third time, didn't you?

**A.** He went back the third time, yes, sir.

**Q.** Would you mind answering the question? You sent



*Testimony of William L. Sheets*

him — you ought to know. You are the ones who sent him, aren't you?

A. I had nothing to do with sending him, Mr. Norman.

Q. Well, Mr. Sheridan sent him?

A. I presume so.

Q. You presume so. Who did?

A. I mere strapped the thing on his back. I didn't tell him to go.

Q. Who did tell him to go?

A. I don't know. I don't know that I was present when he was told to go.

Q. All right, Mr. Sheets. Now, you don't know anything about the highly technical side of these machines and don't

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pretend to know, do you, Mr. Sheets?

A. No, sir.

Q. And if there was a malfunction, as the representative of the Attorney General's office says, or whatever it is, you don't know that, you just don't know about what caused it, do you?

A. I know there was a malfunction but don't know what caused it.

Q. You know it didn't work?

A. That is right.

Q. At least, that is what Vick said?

A. Well, that was explained to me.

Q. Well, you don't know whether Osborn said anything or not, if it wasn't up on that tape, do you?

A. No, sir.

Q. Except what Vick told you, do you?

A. No, sir.

MR. NORMAN: That is all.

*Testimony of Robert D. Vick*

**TESTIMONY OF ROBERT D. VICK**

**ROBERT D. VICK** the next witness, being first duly sworn, was examined and testified as follows:

**DIRECT EXAMINATION**

**BY MR. HOOKER:**

Q. State your full name, please?

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A. Robert D. Vick.

Q. And where do you live, Mr. Vick?

A. 2103 Martha Street, Nashville.

Q. How long have you lived in Nashville?

A. All my life, except for the time I was in the service, and a short time I lived in Indianapolis.

Q. Were you in the service, in the United States Army?

A. Yes, sir.

Q. And you say you lived a short time in Indianapolis?

A. Yes, sir.

Q. When was that?

A. From about '49 to about — 1949, to about 1952, something like that.

Q. The remainder of the time, you were born and lived here, with those exceptions, all of your life?

A. Yes, sir.

Q. Are you a man of family?

A. Yes, I have a family.

Q. What is the extent of your family?

A. I have a wife and three sons.

Q. They all live here in Nashville?

A. Yes, sir.

Q. Now, where have you been employed in recent years, Mr. Vick?

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A. Nashville Police Department, and the Sheriff's Office.

*Testimony of Robert D. Vick*

Q. During what period of time were you employed in the Sheriff's office?

A. I believe, Mr. Hooker, from May of 1962 until about July — no, let's see. Until about November of 1962. From that time on with the Police Department.

Q. And you have been with the Police Department?

A. Yes, sir.

Q. Are you working with the Police Department at the present time?

A. Yes, sir, I am employed by the Police Department.

Q. Are you on any particular assignment, on any special assignment? If you, what are your duties at the present time?

A. I am on special assignment to the Federal Government.

Q. And are you still being paid your salary by the Police Department?

A. Yes, sir; that is correct.

Q. How long have you known the defendant, Z. T. Osborn?

A. Well, I have known Mr. Osborn for several years, Mr. Hooker. I have known him pretty well for the last couple of years.

Q. You have known him before that, but you have known him better in the last couple of years, is that what you mean to say?

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A. Yes, sir.

Q. Were you ever employed by Mr. Osborn?

A. Yes, sir.

Q. When were you first employed by him?

A. I believe this was in October of 1962.

Q. Now, was that before or during, or just when was it, with reference to the — what I refer to as the first James R. Hoffa case, the Test Fleet case?

*Testimony of Robert D. Vick*

A. That was just prior, I believe, Mr. Hooker, to the beginning of the Test Fleet case.

Q. Just prior to the commencement of that case?

A. Yes, sir.

Q. And that was in Judge Miller's Court here, the United States District Court here, wa sit not?

A. I believe it was, yes, sir.

Q. And what was your assignment, for what purpose were you employed by Mr. Osborn?

A. I was employed to, along with some other men, to make an investigation of the prospective jurors in that case that you referred to, the Test Fleet case.

Q. And did you make such an investigation?

A. Yes, sir.

Q. Did you make that investigation — was your investigation limited to Davidson County, or did you or not go  
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into a number of other counties in the Middle District of Tennessee?

A. Yes, sir. I think we went into every county in the Middle District of Tennessee.

Q. You say we. How many other people were employed in that capacity?

A. I don't know, Mr. Hooker. There were two other gentlemen directly working with me.

Q. What were their names?

A. Mr. Fred Ramsey and Mr. John Tolliver.

Q. And how long, Mr. Vick, did you continue that investigation?

A. Well, we continued that investigation, I believe, until the case was over, Mr. Hooker.

Q. You mean even after the case was in progress, did you continue to make investigations about people that were actually on the jury?

A. Yes, sir.



*Testimony of Robert D. Vick*

Q. In connection with — first let me ask you: was there any person, or persons, on the jury in that case, that were from Wilson County, from Lebanon?

A. Yes, sir.

Q. Do you remember their names?

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A. I remember Mrs. Harrison. I was trying to think of some others from Wilson County.

Q. But in any event was there a Mrs. D. M. Harrison on that jury?

A. Yes, sir.

Q. Now, did you have any occasion to go to Lebanon in connection with Mrs. Harrison, or any occasion to discuss Mrs. Harrison while you were in Lebanon?

A. Yes, sir.

Q. And with whom did you have that discussion?

A. Mr. Harry Beard.

Q. And who else was present?

A. Mr. Ramsey was there a time or two, I am not sure how many times he was there.

Q. Did you have that discussion in connection with your employment by Mr. Osborn?

A. Yes, sir.

Q. Do you remember the date of the first discussion that you had with Harry Beard?

A. No, sir. I am not sure of the exact date, Mr. Hooker.

Q. Where did the discussion take place?

A. Well, we saw Mr. Beard several times. He done a lot of work for us in this case, and then later on in the Grand Jury.

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I believe that the first one was in his office. I am not sure about that.

Q. In his office at Lebanon?

A. We saw him, I recall, in his back yard one time, and

*Testimony of Robert D. Vick*

then we saw him in a cafe one time, I believe. And then I think I saw him one other time over on another street, I am not sure.

Q. Over on another street?

A. Yes, sir. I took him somewhere, I believe his car was broken down, and I left him off over there. But I believe this was in the Grand Jury investigation, sir.

Q. Do you recall what was said in your first discussion, Mr. Vick?

A. With Mr. Beard?

Q. Yes.

A. Well, we wanted information about people in Lebanon, and whoever we had, I don't know how many—I don't recall now how many people we had in and around Lebanon and in Wilson County, but we wanted information on them, and Mr. Beard agreed to get this information.

Q. Was that before the trial started.

A. I am not sure. I believe it was, Mr. Hooker.

Q. Before the jury had been selected?

A. I believe it was.

. . . . .

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Q. Now, after the Test Fleet case was over, was there a period of time when you were not employed by Mr. Osborn?

A. Yes, sir.

Q. When were you then re-employed by him?

A. I believe this was to investigate the Grand Jury.

Q. Some Grand Jury that was here investigating matters?

A. There had been an indictment, of course, of Mr. Hoffa, and Mr. King, and Mr. Parks, and some other gentlemen, and I was employed to investigate the background of the Grand Jurors.

Q. Well, now, was that in connection with the Grand Jury that returned the indictment that has been referred

*Testimony of Robert D. Vick*

to generally as the jury tampering indictment, the case  
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which was tried at Chattanooga?

A. Yes, it was that case.

Q. And you were employed by Mr. Osborn to investigate those Grand Jurors?

A. Yes, sir.

Q. Was that before or were you — were you employed before or after the indictment was returned?

A. I am sure it was before the indictment was returned.

Q. Was the case under consideration by the Grand Jury?

A. The Grand Jury was hearing testimony on it.

Q. That's what I say. They were hearing testimony; and did you make such an investigation?

A. Yes, sir.

Q. Did that expand, as you stated that your other one did, not only in Davidson, but in other counties in the Middle District of Tennessee?

A. Yes, sir.

Q. Now — and you continued on that until after the indictments were returned?

A. Yes, sir, I believe I did.

Q. Now, were you employed by Mr. Osborn in connection with investigating the jurors, or prospective jurors —

MR. NORMAN: May it please the Court, I hate to interrupt the examiner, but this man is an officer and a policeman, it is not necessary to lead him.  
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MR. HOOKER: All right.

MR. NORMAN: He can ask him questions and let him testify.

THE COURT: No leading.

Don't lead him.

BY MR. HOOKER:

*Testimony of Robert D. Vick*

Q. Were you employed in any other capacity by Mr. Osborn?

A. Yes, sir.

Q. What was that?

A. Well, that was the jury tampering case that was going to be tried, I believe, in Judge Gray's court, and the panel, of the prospective jurors, were being investigated as we had investigated the Test Fleet prospective jurors.

Q. Was this the jury that was going to try the indictment that the Grand Jury had returned?

A. Yes, sir.

Q. You first investigated the Grand Jury and then the petit jury?

A. That is correct.

Q. Were you furnished any names in that connection?

A. Yes, sir, I was — now, I did not investigate the

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prospective jurors in Judge Gray's court, Mr. Hooker. I believe at that time Judge Miller had a panel also in his court, of prospective jurors, and I was hired, retained by Mr. Osborn to investigate the jurors in Judge Miller's court. They felt, Mr. Osborn felt, that the prospective jurors in Judge Gray's court may be exhausted before they could get a jury.

Q. And they used some of the jurors in Judge Miller's court?

A. I don't know whether they actually did or not, but he thought they might.

Q. Mr. Vick, I haven't asked you up until now, but for all of the services that you referred to, were you paid?

A. By Mr. Osborn?

Q. Yes.

A. Yes.



*Testimony of Robert D. Vick*

Q. How were you paid?

A. By check.

Q. His personal check or a check of his firm?

A. The firm.

Q. And you were paid for the services that you rendered?

A. Yes, sir, that is correct.

Q. Now, in connection with the investigation of this petit jury panel that would try the jury tampering case, did you have any conversation with Mr. Osborn about any particu-

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lar jurors on that panel?

A. Yes, sir.

Q. What jurors?

A. I think we discussed three jurors in all. One was a Mr. Corn; another —

Q. Where does he live, do you remember?

A. I believe he lives in Brentwood.

Q. Brentwood? All right.

A. Then there was another one. I don't recall his name right now. He lived out here on 16th, or it was his wife, I believe, that was on the jury. Then we discussed Mr. Elliott from Springfield, who was on the panel.

Q. At Springfield. All right. When was the first time, Mr. Vick, that you discussed with Mr. Osborn Mr. Elliott in Springfield?

A. I believe that this was on the 7th or 8th of November, Mr. Hooker.

Q. Of 19 —

A. — 63.

Q. 1963. And where did that discussion take place?

A. I believe we first started talking in Mr. Osborn's office. Then we went out side and talked for a while.

*Testimony of Robert D. Vick*

Q. Now, before I get into that conversation, and subsequent ones, I want to ask you if prior to that time you  
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had had any discussions with a Mr. Walter Sheridan?

A. Yes, sir.

Q. Who is Mr. Sheridan?

A. Mr. Sheridan is with the Justice Department.

Q. And when was it that you had your first conversation with him?

A. I believe my very first conversation with Mr. Sheridan was maybe in July or the summer time some time.

Q. Some time in the summer?

A. Yes, sir.

Q. And were you — did you have any understanding with him about any information that you might furnish him?

A. Yes, sir.

Q. And what was to be the nature of any information that you furnished?

A. Mr. Sheridan said that if I heard of any — that he was not interested in any of their legal activities, but that if I heard of any illegal activities, he would appreciate it if I would give him a call.

Q. Did you see him any more after that?

A. I am sure I did, Mr. Hooker; I don't recall any specific instances, but I am sure I did.

Q. All right. So your first conversation with Mr. Osborn about the juror Elliott was on, you said, November 7?

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A. It was either the 7th or the 8th. It could very well have been the 7th.

Q. And where did that take place?

A. Well, we originally discussed the juror in Mr. Osborn's office; then we went outside.

*Testimony of Robert D. Vick*

Q. You went outside?

A. Yes, sir.

Q. Was there any reason assigned by Mr. Osborn or you for going outside?

A. Well, of course, Mr. Hooker, there had been a lot of talk about tape recordings and hidden microphones and this sort of thing, and we were a little apprehensive, there was some discussion about whether Mr. Osborn's office was bugged or not.

Q. Well, was that discussed between you and Mr. Osborn that day?

A. Yes, it was.

Q. Did you have any tape recording on that day?

A. I am not — no, sir.

Q. Not on that occasion?

A. Not the original conversation.

Q. All right. State to these ladies and gentlemen of the jury—you went out of the office, where did you go?

A. We went to — there is an alley beside Mr. Osborn's

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former office. We crossed this alley and maybe stood in the second doorway or the third doorway from Third Avenue North.

Q. I was going to ask you, where was Mr. Osborn's office located at that time?

A. On Third Avenue North, between Church and Union.

Q. On which side of the street?

A. On the east side.

Q. So you went out there in the alley. Just tell these ladies and gentlemen of the jury what was said by you and by Mr. Osborn on that occasion.

A. Well, we were in Mr. Osborn's office discussing the prospective jurors that I was investigating, that is, in Judge Miller's Court, and I mentioned that I knew some members

*Testimony of Robert D. Vick*

in Judge Gray's court, and Mr. Osborn jumped up and said, "You do?"

And said, "Why didn't you tell me?"

And I said that I had previously told John Polk that I was acquainted with some of the jurors in Judge Gray's Court. Then we discussed about whether to discuss it in his office or not, and we went outside and discussed it, and he said — I told him the juror Elliott was a cousin of mine, and that — and he told me to go down to Springfield and get him on his — our side, and talk to him, and see what, if any, arrangements could be made, or something

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like that, about the case, this, that and the other.

Q. Was Elliott, the Elliott that was on the jury in that case, a cousin of yours?

A. Yes, sir.

Q. Do you know how close a cousin?

Q. Well, was that the full extent of the substance and extent of the first conversation with Mr. Osborn that you say occurred on either November 7 or 8?

A. Yes, sir, I believe that's about it.

Q. Now, then, Mr. Vick, did you report that conversation to anyone connected with the United States Government?

A. Yes, sir.

Q. To whom did you report it?

A. Mr. Sheridan.

Q. And then did you go back to Mr. Osborn's office?

A. That day?

Q. No, at any subsequent time?

A. Yes, sir.

Q. When did you go back?

A. I believe it was the following day.

Q. The following day?

A. Yes, sir.



*Testimony of Robert D. Vick*

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Q. Well, when you went back on the following day, did you have any tape recorder with you?

A. Yes, sir.

Q. And who put the tape recorder on you?

A. I believe Mr. Sheets, from the FBI.

Q. Where was that done?

A. Here in this building.

Q. And where was the tape recorded fastened to your body?

A. Right here in the small of my back.

Q. And how was it fastened there?

A. With tape, with adhesive tape.

Q. And of course under your clothing?

A. Yes, sir.

Q. Did it have any microphone on it, in connection with it?

A. Yes, sir, it had two.

Q. And where were they?

A. One was over here (indicating), and one was over here (indicating).

Q. You indicate one on the left shoulder and one at the right shoulder?

A. Yes, sir, on the chest.

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A. On the chest. Under your coat?

A. Yes, sir.

Q. And did you go back to Mr. Osborn equipped with that tape recorder?

A. Yes, sir.

Q. Just tell these ladies and gentlemen of the jury what happened on that occasion.

A. Well, I believe that this was the occasion, I am sure it was, when the recording device broke down. We had a

*Testimony of Robert D. Vick*

discussion about the juror Elliott, and outside, again outside of Mr. Osborn's office. And I believe that the recording failed to record any of this conversation, or at least a part of it, or something.

Q. Well, did you, after that conversation was over, did you go back to the — come back to this building?

A. Yes, sir.

Q. And to whose office did you go?

A. Mr. Sheridan's.

Q. Mr. Sheridan's office. Was anyone else present?

A. I believe that Mr. Steele and Mr. Sheets, of the FBI were present.

Q. They are both special agents for the FBI?

A. Yes.

Q. Did you or not make any statement at that time before the tape recorder was taken off and examined?

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A. Yes, sir, I related, I believe, to Mr. Sheets the conversation that I had had with Mr. Osborn about the juror Elliott.

Q. And was that before the tape recorder was examined?

A. No, sir, I believe this was after.

Q. You think it was after?

A. Yes, sir.

Q. But in any event, you made — did you make that statement in writing?

A. Yes, sir.

Q. And just tell these ladies and gentlemen now, Mr. Vick, what was said in that conversation.

A. Well, as best I can recall, Mr. Hooker, again, we talked about the juror, and the fact that Mr. Osborn wanted him on his side, and how much it would take, and so forth, and I believe on this occasion we talked about these two other jurors that I previously mentioned, Mr. Corn, and I

*Testimony of Robert D. Vick*

believe Mr. Osborn said he wanted to follow upon Elliott, and for me to see him and make him a proposition about some money, and hanging the jury.

Q. Was any amount of money mentioned?

A. I believe it was on this occasion when Mr. Osborn said to let him make the — state the amount that he would need, and whatever amount he makes, you just double it.

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Q. Let Elliott mention the amount?

A. And if he said \$5,000, I was to offer him \$10,000.

Q. Now, then, when you took the tape recorder off of you on that occasion, would it work?

A. No, sir, I believe that they found that there had been a defect in the device, or something. I don't know exactly what happened to it, but it didn't work. The whole conversation wasn't on the tape.

Q. Well, in any event, they didn't play it, it wouldn't play for some reason or other?

A. That's true.

Q. Now, getting back to the time that you came down here and talked—immediately following that meeting, when this tape recorder was taken off of you, you stated that you did make a written statement at that time? Is that right?

A. Yes, sir.

Q. You stated that your recollection was that that was after the tape recording was taken off?

A. That is correct.

Q. But had you before that time made an oral statement?

A. I believe that I had made a statement concerning the original conversation that I had had with Mr. Osborn.

Q. And to whom did you make this oral statement?

A. I believe to special agents of the FBI and to Mr.

*Testimony of Robert D. Vick*

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Sheridan.

Q. That would be Mr. Sheets and Mr. Steele and Mr. Sheridan?

A. Yes, sir.

Q. And after the recording was taken off and it was found it wasn't working, then that statement was reduced to writing, your oral statement, and you signed that?

A. Yes, sir.

Q. Now, Mr. Vick, did you go back to Mr. Osborn's office on any other occasion?

A. Yes, sir.

Q. When was that?

A. I believe this was on November 11.

Q. That was Armistice Day, or Veterans' Day, as we call it?

A. Of 1963, yes.

Q. And was Mr. Osborn there that day?

A. Yes, sir.

Q. Now, did you have any sort of machine on you at that time?

A. Yes, sir.

Q. And who put the machine on you?

A. Mr. Sheets.

Q. Was it put on substantially like it had been before?

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A. Yes, sir.

Q. Strapped to the small of your back?

A. Yes, sir.

Q. And you went to Mr. Osborn's office?

A. Yes, sir.

Q. Just tell these ladies and gentlemen of the jury what happened on that occasion?



*Testimony of Robert D. Vick*

A. Well, I went in and the receptionist — Mr. Osborn's door was closed, and obviously he was talking to somebody. And I asked his secretary if he was there and she said he was and he was talking to John Polk. I said I would wait. When he got through I went in to talk to him. And I asked him whether he wanted — I believe I asked him whether he wanted to discuss the matter in his office or not, and he stated he didn't know, how far did I go, or something like that. And I said, "Pretty far." And I told him I had been to Springfield the previous Saturday and talked to Elliott, and I thought everything was all right, I thought Elliott was susceptible to money for hanging this jury in this tampering case, —

Q. As a matter of fact —

A. — Against Hoffa.

Q. As a matter of fact you had not been Elliott?

A. No, sir.

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Q. All right. What else was said?

A. It has been six months, but I will try to recall the best I can.

We just discussed generally the matter of Elliott. Mr. Osborn told me to tell Mr. Elliott a few things, one, that if he wanted a deal he could have it, that he had it. And that he would, of course it was his understanding that Mr. Elliott would have to be seated on the jury before he had a deal; and that he would receive \$5,000 the minute he was seated and then that he would receive another \$5,000 the minute that — when he hung the jury, but he would have to go all the way, and to assure Mr. Elliott that he would not be alone, that there would be some other jurors in there.

Q. Did he say how many?

A. I believe two he mentioned.

*Testimony of Robert D. Vick*

Q. Two others with him?

A. Two others besides Elliott.

Q. What if anything else was said about going all the way?

A. Well, Mr. Hooker, we had previously discussed the question of this jury swinging, or whether he would have to hang the jury all the way, stay all the way. And Mr. Osborn said that he wanted him to stay all the way; he

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wanted to hang it from the beginning to the end. I was to relay this to Mr. Elliott.

Q. Well, now, I am not familiar with some of the vernacular that you used. What do you mean by "swinging"?

A. Well, this was discussed as a situation where a juror may be paid money to vote for an acquittal, or if they saw that it was going to be — that they was going to be acquitted anyway, and to avoid any suspicion on themselves, they could then vote for a conviction.

Q. Just so long as they were sure it hung anyhow?

A. That is correct.

Q. But was that to have been the understanding with Elliott?

A. No, sir, he was to hang it all the way.

Q. All the way.

Now, after you left Mr. Osborn's office on that occasion, Mr. Vick, where did you go then?

A. Back to this building.

Q. And what did you do here at this building?

A. I believe that Mr. Sheets removed the tape recording from my body, and they listened to it.

Q. From the time that the tape recorder was put on in the small of your back, when you left this building on that occasion, and went to Mr. Osborn's office, did you go any-

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where else except from here to Mr. Osborn's office and back?

A. I believe that I walked up to the Stahlman Building, Mr. Hooker. There were two men sitting in Mr. Osborn's office. I didn't know them. And I believe that I went up to the Stahlman Building and called Mr. Sheridan from Stumb's Restaurant, and told him that there were two men in this office that I didn't know, and that I didn't know what was going to happen, of course. I was a little apprehensive about the whole thing. And that under no circumstances would I leave that office with these two men.

And if — I asked him if any — if he had any men in that area, and he said yes, that there was some agents in the area. And that if I had to leave the office with these two men, I had a yellow envelope in my hand, and I told him that if I dropped this yellow envelope, that I wanted some help and I wanted it right now.

He said all right, and then I went directly back to Mr. Osborn's office.

Q. Then after you left Mr. Osborn's office, did you come directly to the Federal Building?

A. Yes.

Q. From the time that the machine was put on you until you were back here and it was taken off, was it ever taken

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off your body on any occasion?

A. No, sir.

Q. Did you open it or fool with it or do anything with it?

A. No, sir. I had very little to do with it except turn the switch on and off.

Q. Did you hear the record played when you got back?

A. I believe I heard part of it at that time.

Q. And then later, since that time have you heard it again?

*Testimony of Robert D. Vick*

A. Yes, sir.

Q. State whether or not at my request you listened to it again in its entirety yesterday?

A. Yes, sir.

Q. Is there anything on the record except conversations between you and Mr. Osborn, maybe with the exception of some introductory things?

A. Some typewriter noise, and some other noise that I don't know what it is, what the other noise is.

Q. But as far as the main conversation is concerned, that is recorded, whose voices are there in the conversation?

A. Well, as far as the main conversation is concerned, the voices are Mr. Osborn's and mine.

Q. That is the defendant, Z. T. Osborn, who is here in court room, and yourself, Robert D. Vick?

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A. Yes, sir.

Q. And could you recognize your voice?

A. Yes, sir.

Q. Could you recognize his voice?

A. Well, I am not sure. Mr. Osborn whispered a lot, and I am not sure that I could absolutely recognize his voice.

Q. But in any event you were present at the time this conversation was going on, and whose voice was it?

A. Mr. Osborn's.

Q. Now, after this recording was made, and you heard it played, did you later have occasion to see a transcript of the recording?

A. Yes, sir.

Q. That is what was said on the recording?

A. Yes, sir.



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Q. And have you had occasion since that time to examine this Exhibit 12?

(Document handed to the Witness.)

A. Yes, sir.

Q. And read it?

A. Yes, sir.

Q. Is that an accurate or an inaccurate transcript of P. 325

what was said?

A. That is accurate.

Q. In other words, where it is indicated that you said certain things, it is accurate; and where it is indicated that Mr. Osborn said certain things, that's accurate?

A. Yes, sir.

MR. HOOKER: Now, if Your Honor please, we have provided here in the court room a sufficient number of ear-phones for each member of the jury to hear this recording, Your Honor, and counsel for the defendant, and counsel for the defense, and the Court Reporter, and we would like to play this recording.

Before doing so, the record of which has already been offered in evidence as, I believe it is Exhibit No. 11 — 10, — before doing so, we have had Xerox copies, or some sort of copies, made, of this Exhibit 12, and we would like to pass copies of the Exhibit, a copy to each member of the jury, so as they listen to the recording, they can follow it, if they desire to do so, on the transcription.

THE COURT: Is there any objection to that procedure?

MR. NORMAN: We have no objection whatsoever. We think it is a good way to do it when we have a tape recorder in court.

THE COURT: All right, sir, you may proceed.

*Testimony of Robert D. Vick*

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MR. HOOKER: Is there someone — Someone who knows how to turn this thing on and operate it, come around.

I want Mr. Vick to have one, and I think the stenographer, and you. Your Honor doesn't have one of these copies yet, do you? Exhibit No. 12?

THE CLERK: You gave me the original and I gave it to His Honor.

MR. HOOKER: Are these all the copies we have got, Mr. Neal? We don't seem to have quite enough.

THE CLERK: Do you have the original?

MR. HOOKER: It doesn't leave any for us.

THE COURT: Give him this. I can follow it all right.

MR. NORMAN: I have one in the transcript I can use.

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MR. NEAL: We have got one here, too.

BY MR. HOOKER:

Q. Before I get into this, I neglected to ask you: Did you go, in between the two meetings that you have described, the one where the recorder failed for some reason or another, and then this meeting, did you go to see Mr. Osborn in between those two times?

A. Yes, sir, I believe I was in there, in his office on the Saturday in between those two times.

Q. That would be — if Monday was the 11th, that would have been the 9th?

A. Yes, sir.

Q. Did you see him at that time?

A. No, sir, I didn't.

Q. Why didn't you.

A. He wasn't in his office.

MR. HOOKER: Now, if Your Honor please, we think that perhaps for the purposes of the record, that this transcript should be read into the record.

*Testimony of Robert D. Vick*

**THE COURT:** Well, why not just introduce it?

**MR. NORMAN:** The jury is going to read it and the tape recorder is going to play it. I see no reason to read it.

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**THE COURT:** I see no reason to read it into the record. You may introduce it.

**MR. HOOKER:** It is going to be necessary, so I am advised by Mr. Sheets, to change the spool on this particular machine. I thought it was in order so it would proceed, so we could proceed with it immediately. And if we could have, with Your Honor's indulgence for just a very few minutes, for that to be done.

**THE COURT:** All right, come around, Mr. Sheets.

**MR. SHEETS:** Your Honor, the tape is ready.

**THE COURT:** All right, if you are ready.

Put the earphones on.

**MR. HOOKER:** We would like to suggest to the jury, if they so desire, they might follow along with the transcription.

(Whereupon, a tape recording, Exhibit No. 10, of which Exhibit No. 12 is a typewritten transcript, was played.)

(By Mr. Hooker:)

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**Q.** Mr. Vick, it has been called to my attention that there may have been some answer that you gave that is not quite intelligible.

I thought I understood it. But I want to ask it again.

What was it he said in connection with the swing man, or swinging?

**A.** Well, we had previously discussed the possibility of — the term "swing," as I understand, Mr. Hooker — understand it then — is a juror is tampered with, he may have the option to stay all the way or hang it all

*Testimony of Robert D. Vick*

the way, or he may swing if he thinks they are going to hang it, and he can then vote for a conviction.

Is that what you are talking about?

Q. Yes. In other words —

A. This man was to hang it all the way.

Q. All the way, and not swinging back and forth, is that what you mean?

A. That is right.

Q. Not to vote for acquittal if he is sure it is going to be hung anyway, but vote all the way through for a conviction?

A. That is right.

MR. NEAL: Now —

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(Counsel confer)

Q. In other words, to stay for an acquittal all the way through, is what I meant.

A. Yes, sir.

Q. Not swing back and forth?

A. Yes, sir.

Q. Now, Mr. Vick, there are some voices at the beginning of this record, some lady there. Do you know who that was?

A. Other than the receptionist — there is a receptionist in Mr. Osborn's office, and his secretary. That is all.

Q. Do you know what they call her?

A. Sir?

Q. Do you know her name?

A. The name of the girl — the receptionist's first name is Delores. I don't know her last name.

Q. And she is the one you talked to, some voice at the beginning of the record?

A. That is right.

Q. Then there is another voice at the beginning while it



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starts there at the front and can hear it. Do you know whose voice it is?

A. Stan Chenard. He came in there.

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Q. That is an associate of Mr. Osborn's at that time?

A. Yes.

Q. Now, neither of those persons were present in the room with Mr. Osborn when the other conversation took place?

A. No, sir.

Q. Now, Mr. Vick, I want to ask you if at any time you or any member of your family have been paid anything by the United States Government?

A. No, sir.

Q. Have you been promised to be paid anything?

A. No, sir.

Q. By any representative of the Government?

A. No, sir.

Q. Or have you been promised, aside from to be paid —  
— promised to be given anything of value of any sort?

A. No, sir.

Q. At any time?

A. No, sir.

Q. Why did you first conclude to tell a representative of the Department of Justice about this matter, Mr. Vick?

A. Well, that question is a little difficult to answer, Mr. Hooker. And it will take quite some time to answer it.

If you want me to answer it, about the only way I know

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how to answer it, I will try.

Q. I wish you would.

A. In the summer of 1963, I was working for the Police Department, and in the workhouse — City workhouse,

*Testimony of Robert D. Vick*

which was the old City workhouse. They were going to merge. The Metropolitan government had passed, and they were going to merge all the jails and place them under the Sheriff's office. And the personnel at the workhouse was supposed to be transferred over to the Sheriff's office in the same general capacity that they were working then before the merger.

The Chief, in other words, would no longer have the jurisdiction over a jail and a City workhouse. All this would be transferred to the Sheriff. And prior to that, the Chief did have — the Police Department did have its own jail and did maintain under the Chief a workhouse for misdemeanors.

This is where I worked.

I was told that because of my participation in the Hoffa case, private investigation that I had done, that I would not be transferred over to — the Sheriff would not permit me to come over with the rest of them.

I called Mr. — I didn't know Mr. Sheridan at this  
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time. I asked Mr. Sheridan for an appointment. He gave me an appointment.

And I believe that the first — first thing he ever asked me was if I thought they were going to attempt to tamper with the jury that was going to try Mr. Hoffa and there other people on the jury tampering charges.

And I asked him if he thought that they had tampered with the last one, meaning the Test Fleet case. And he said e felt that they had.

So I said, "Well, that should be sufficient answer for you."

And he asked me to tell him if I knew of any violations of the law. And I had a lengthy discussion with him, in which I told him about a trip to Lebanon to see Mr. Beard

*Testimony of Robert D. Vick*

and the relation with Harrison. And I asked him if I could get a clean bill of health from the Government because I had to go to work, I had to make a living, and evidently the Sheriff wasn't going to take me because he felt that it might reflect some bad publicity on the Sheriff's office, or some reason. And I had to have a statement or some such thing from the Justice Department stating that they had given me a clean bill of health, so to speak, so I could go to work.

And he said that he would do that.

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And that he asked me ——— he told me not to ——— that he wasn't interested in any of their legal activities, but if I was called on to do any work in the future of an illegal nature, would I please call him. And I said I would. And then I did.

Now, at the time, Mr. Hooker, I don't think that I had completely made up my mind to actually call him if I did illegal operations. But at a later time, shortly thereafter, I had another discussion with him, in which I made up my mind to talk to him.

Q. Is this recording that has been played here this morning and you listened to and the jury listened to — the ladies and gentlemen of the jury listened to — is that recording an accurate recording of the conversation?

A. Yes, sir.

Q. (Continuing) ——— That you had on November 11, 1963, with Mr. Osborn — Z. T. Osborn?

A. Yes, sir.

Q. Now, before there was ever any recording or any attempt at recording, I believe you stated you had had a discussion before that about Juror Elliott?

A. Yes, sir.

Q. Before there was ever any recording?

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A. Yes, sir.

Q. Was it suggested at that time that you do anything about Elliott?

A. That I go to see him and get him on our side.

Q. That is all. And did you later report that to Mr. Sheridan?

A. Yes, sir, that was the original conversation that was reported.

Q. And what did you do? After that, you went back with the recording?

A. Yes, sir.

MR. HOOKER: That is all.

THE CLERK: The Court will come to order.

**CROSS-EXAMINATION**

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BY MR. NORMAN:

Q. Mr. Vick, how old did you say you were?

A. I am 39, Mr. Norman.

Q. When did you go to work for the Sheriff's Office?

A. In May of 1962.

Q. And in what capacity were you employed? What did you do with the Sheriff's office?

A. Civil process server.

Q. In May of 1962. And when did you first — When were you first employed by Mr. Osborn?

A. I believe in October of 1962, Mr. Norman.

Q. Then you had only been working in the Sheriff's office about five or six months at that time?

A. That's correct.

Q. Now, did you have any other employment except sheriff's deputy at that time?



*Testimony of Robert D. Vick*

A. No, sir, I don't believe I did, except maybe some private work I did for some lawyers, or something, Mr. Norman.

Q. What kind of private work?

A. Well, there may have been some investigations,

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Q. Well, don't tell me —

Mr. Vick, from now on, when I ask you a question if you know the answer say so. Don't say what it may have been.

A. Well, I don't know for certain, Mr. Norman.

Q. You don't know what kind of work you did for lawyers if you did any?

A. Well, if I did any —

Q. The truth of the matter is you made investigations against men and women in divorce cases, didn't you?

A. I have done that.

Q. Yes. You were doing that on the side, and then you were a deputy sheriff?

A. Yes, sir.

Q. Now, then, by that you would go out and get evidence against a man or woman to be used in a divorce case?

A. Yes, sir.

Q. Now, then, Mr. Vick, did Mr. Osborn hire you alone, or some other people, or did he hire somebody and they hired you? How was it?

A. I believe that he hired Mr. Ramsey, and Mr. Ramsey asked me if I wanted a job, and we went — and Mr. Tolliver, at the same time — and I believe we went and talked to Mr. Osborn.

Q. Yes. Now, then, so that we might clear up one thing

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at a time before the jury here, in all those investigations you had a form, did you not, to make investigations con-

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cerning three things: race, religion, and employment? And you had it headed that way on your forms, did you not?

A. That's correct.

Q. And that was the type of investigation you speak of when you talk about the jury and the grand jury back there?

A. That is correct.

Q. And so that there might not be any question about it, there was nothing wrong about that? You don't insist that there was anything wrong about that from top to bottom?

A. No, sir.

Q. You filed your reports, did you not?

A. That's correct.

Q. And you were paid by check, with no cash or anything like that, under the table. The firm that he belonged to issued you their checks for that work, did they not?

A. Yes.

Q. All right. Now, you had been working for the sheriff's office, and doing this divorce work, investigating work, for about five months when you employed you in October of 1962. That's just not quite two years ago.

Now, then, when did you become a policeman?

A. I believe this was in November — I went to work

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for the police department I believe in November of 1962.

Q. So then while you were working for Mr. Osborn you were still — you started while you were a deputy sheriff, had been since May of '62, and you started working for him in addition to your employment as an officer in October, '62, and the next month you became a policeman?

A. That's correct.

Q. Now, were you still working for Mr. Osborn on these investigations when you became a policeman?

*Testimony of Robert D. Vick*

A. Off and on, yes. I don't know that I was working for him on the exact date that I became a policeman. But I did work for him after I became a policeman.

Q. Spread over that time?

A. Yes, sir.

Q. All right. Now, then, after your first case, and after you got through with those first investigations, and then the grand jury investigation, by that time you were a policeman?

A. Yes, sir.

Q. On the Metropolitan Police Force.

Now, in closing your direct examination Mr. Hooker had asked you why you went to the government about this thing, and you told him something about you wanted a clean bill of health. I want to get into that just a little bit.

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What did you mean by a clean bill of health?

A. Well, as I previously said, when the jails were merged I was working under the Chief at the old City Workhouse, and the jails were going to be merged —

Q. Were you under civil service as a policeman?

A. No, sir.

And the jails were going to be merged, and this transferred over to the Sheriff's office. He was then to be keeper of the jail.

Q. What do you mean, you thought you were going to lose your job?

A. Yes.

Q. In other words, you thought you were going to lose your job —

A. Well, I did lose it, Mr. Norman.

Q. Is that the reason you want to Mr. Sheridan to get another job?

*Testimony of Robert D. Vick*

A. No, sir, not to get another job. I went to Mr. Sheridan to get a clean bill of health, so I could get another job. I was told that because of my participation in the Hoffa case that there may be something come out that would —

Q. Who told you that?

A. I am not sure. I think it might have been Chief P. 341

Thomas. I am not sure about that. We had a discussion.

Q. Did he tell you that you had been doing something wrong?

A. No, but he just said something might come out that would case a bad reflection on the Sheriff's Office. This is what I was talking about.

Q. You were afraid you were going to lose your job?

A. I did lose it.

Q. You say you weren't looking for another job. Why did you volunteer you were going to lose your job?

A. I was looking for a job.

Q. Did you hope to get one with the federal government?

A. No, I never made application with the federal government.

Q. I don't understand what you mean, you were afraid you were going to lose your job, and you wanted a job, and that's the reason you went to the federal officer, but you say you weren't looking for one with the federal government.

A. No, sir.

Q. All right. Well, I thought you told Mr. Hooker, when he took an affidavit, that you went to the Department of Justice and reported this because you thought it was your duty as a citizen?

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A. I believe I said on that occasion, Mr. Norman, that



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that wasn't all of the reason, but that was at least a part of it.

Q. What did you tell him was the rest of the reason?

A. I didn't tell him, Mr. Norman.

Q. Why didn't you?

A. Well, I just wasn't sure myself what the reason was.

Q. But you now say it was so you could get a clean bill of health?

A. Well, I said that then, Mr. Norman, I believe. I may be wrong.

Q. You think you told Mr. Hooker that when he took an affidavit?

A. I don't know. I may not have.

Q. Now, Mr. Vick, to get back to this employment by Mr. Osborn, when you finished, with the others participating, in the investigation of the background as to race, religion, and employment, of the grand jury, you had completed that portion of the work, hadn't you?

A. Yes, sir.

Q. Now, then, when did you first talk to Mr. Osborn about another employment by him?

A. I am not sure, Mr. Norman, of the exact date.

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Q. Well, could you give us some idea?

A. I believe Mr. Osborn called me at home and asked me to call him, and I believe I went to see him.

Q. I will ask you if, on the contrary, you didn't go to Mr. Osborn and tell him — ask him if he could give you something to do, that you were in debt, and you needed to make some extra money, and if he couldn't please give you a job on this other investigation to help you out?

A. Well, I don't recall it, but I could have, Mr. Norman.

Q. Now, would you remember whether you did that or not?

*Testimony of Robert D. Vick*

A. Well, I talked to Mr. Osborn a lot of times. I don't know — And about employment a lot of times, over the phone, and —

Q. I am talking about this last time, the time that preceded this recording, and all that.

I am going to ask you if you don't know — again — if you didn't go to him and say to Mr. Osborn —

You knew he had other people making this investigation at that time, didn't you?

A. I probably did know that.

Q. You know that, didn't you?

A. Yes.

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Q. And he hadn't reemployed you, had he, for this last one?

A. No, I don't think he did.

Q. Now, I am going to ask you again: Didn't you go to him and say that you were hard up and you needed some money, you had some bills you had to pay, and couldn't he please find something for you to do in this investigation? Didn't that happen?

A. I don't recall it, Mr. Norman. I could very well have done that.

Q. All right. And the truth of the matter is he just gave you the back page — of how many names? — in Judge Gray's court?

A. In Judge Miller's court.

Q. In Judge Miller's court?

A. Yes.

Q. Which would have never been called in the case.

A. I didn't know it.

Q. You knew that for some time he had had other people making the investigation for that case, didn't you?

*Testimony of Robert D. Vick*

A. I probably did. I don't recall that I knew it. I probably did.

Q. Now, then, when is the first time you talked to Mr. Sheridan?

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A. I believe it was in the summer of last year.

Q. Could you give us some idea when it was?

A. Well, it was after I found out that I wasn't going to be transferred over to the Sheriff's office.

Q. Oh, when you found out you were going to lose that job?

A. Yes, sir.

Q. That's what makes you remember when it was, is that right?

A. That's exactly right.

Q. And you would need another one?

A. Yes, sir.

Q. All right, where did you see Mr. Sheridan?

A. Here in this building.

Q. Did he send for you?

A. No, sir.

Q. Or did you come down here?

A. I called him and asked him for an appointment, and he gave it to me.

Q. When you called him what did you intend to come down to see him for? What was your reason for calling him and wanting to see him?

A. Well, I had previously told you, Mr. Norman, that I had been told that that reason I wasn't transferred over

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was because of my participation in the Hoffa case, and it might reflect some bad publicity on the sheriff's office. I came down to see if I could not get a clean bill of health if

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the Justice Department had, or wanted anything on me, if they did say so, and if they didn't, give me a clean bill of health so I could apply for another job with the metropolitan government.

Q. Did you make that proposition to Mr. Sheridan?

A. Yes, sir, I did.

Q. And what did he do to give you a clean bill of health?

A. Just to report any illegal activities if I knew of any.

Q. Then it was after that that you went back to Mr. Osborn and begged him to employ you because you had these bills?

A. I don't know that I begged him to.

Q. Well, that you had these bills, and you needed some money?

A. I may very well have.

Q. Let me see if I have the time: You were afraid you would lose your job, you came to Mr. Sheridan to give you a clean bill of health, and he said he would give it to you if you made these investigations. Then after that you went up and asked Mr. Osborn to employ you because you had

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these bills. Is that the way it came in sequence?

A. That could have been the way it happened. It probably was.

Q. All right. Now, did you tell Mr. Sheridan at that time that you would go try to be employed by him and get in his confidence, and get in his office, and get any information you could? Did you tell him you would discuss that with him?

A. No, sir, I didn't.

Q. How did you tell him you were going to do it?

A. I didn't tell him I was going to do anything. He didn't ask me to do anything, Mr. Norman, other than to report



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any illegal activities I might hear about. He knew I knew the lawyers in the case and most of the investigators.

Q. Well, you understood that you had to deliver something for that clean bill of health, didn't you?

A. No, I didn't.

Q. Oh, you didn't

A. No, sir.

Q. Well, why were you going to be on that ground then?

A. Well, just merely as I stated to you, Mr. Norman.

Q. Now, Mr. Vick, when — you would know, you could tell us: When did you first become a government agent? That's what I am trying to establish.

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A. I am not sure I have ever been a government agent, Mr. Norman. I don't know what a government agent is. If you will tell me what it is, maybe I can tell you something about it.

Q. Well, sir, if you are a policeman and don't know what a government agent is, there is no use of me standing up here trying to tell you. You have got some idea what I am talking about when I say government agent, haven't you?

A. I don't work for the Department of Justice or the FBI, and I never have.

Q. When did you agree to work for them in a man's private office with a recorder strapped on you back?

A. In November.

Q. Can you tell us when in November?

A. After the first conversation with Mr. Osborn.

Q. Then you would say November 8, would you not?

A. The 7th or 8th.

Q. Had you ever had any conversations with Mr. Sheridan before, as you say, July of 1963?

A. Before that date?

Q. Yes, sir.

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A. No, sir.

Q. Had you ever talked to Mr. Sheridan, or any other person representing the United States Government, in any way?

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A. Yes, sir.

Q. You don't know what I am going to ask you yet, do you?

A. No, sir.

Q. Concerning your being an informer for them, before July of 1963?

A. No, sir.

Q. Now, you are positive that you had not agreed to assume this role, as I call it, of a government agent, or an informer, whatever you call it, in May of 1963? You are positive of that?

A. Now, Mr. Norman, I don't know — you may be referring to a conversation I reported to an agent of the Federal Bureau of Investigation some time prior to that time.

Q. No, sir, I am going to ask you what —

A. I had no agreement with anybody at any time prior to then.

Q. I am going to ask you if you haven't made a statement that you became an agent in this case in May of 1963? Have you or have you not made that statement?

A. Well, I may have made that statement.

Q. Was it true or false?

A. It was false if I made it, Mr. Norman.

MR. NEAL: Excuse me just a moment.

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I believe that you should lay the foundation for the statements: when, where they were made, to whom they were made, who was present.

*Testimony of Robert D. Vick*

**MR. NORMAN:** When I get ready to lay grounds for contradiction, I will do it. This is cross-examination, if Your Honor please.

**BY MR. NORMAN:**

**Q.** You say you may have made it and it was false if you did. Why would you have made a false statement like that?

**A.** Well, I don't know. If you will tell me what you are referring to, Mr. Norman, I will be glad to tell you about it.

**Q.** Well, now, Mr. Vick, you say you did not assume this role until July of 1963. That is right, is it not?

**A.** That is right.

**Q.** Now, I asked you: Have you made a statement to anybody that you assumed this role in May of 1963?

**Now, have you or have you not? You know whether you have made it or not.**

**A.** Mr. Norman, there have been a lot of conversations about this case, and I have had a lot of conversations with a lot of people about this case, and they have asked me about my part in it, and some time I could have made that statement. I don't deny that I made it. But if you will tell

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me what you —

**Q.** Well, if you made it and you say —

**A.** If I did make it, it was not true. It was joking or something like that.

**Q.** Joking?

**A.** Yes, sir.

**Q.** Well, why would you have joked or lied about that to anybody?

**A.** Well, I don't know, Mr. Norman. If you will tell me what you are referring to, I might —

**Q.** We'll get to it a little later, don't worry about that.

**A.** All right.

*Testimony of Robert D. Vick*

Q. Now, then, Mr. Vick, have you ever talked to Pierre Salinger about this case?

A. No, sir.

Q. Do you know him?

A. No, sir, I do not.

Q. Never came in contact with him in any way, shape, form or fashion —

MR. HOOKER: Who are you talking about?

MR. NORMAN: The present Senator from the State of California, and the late Press Secretary for the late John P. 352

Kennedy.

MR. HOOKER: Oh, Salinger.

MR. NORMAN: That is right.

BY MR. NORMAN:

Q. Have you ever drank beer with him?

A. No, sir.

Q. Did he ever bring you any?

A. No, sir.

Q. All right. Who else from Washington, the Department of Justice, have you met during your connections as an agent or an informer?

A. I don't know, Mr. Neal may be from Washington.

Q. All right. Who else?

A. Mr. Dirken, I believe.

Q. Who else?

A. There could have been some others. I don't recall off-hand.

Q. Where all have you ever been in the company of Mr. Sheridan?

A. Well, in Nashville, and —

Q. Where in Nashville?

A. Here in this building, and —

Q. Where else?



*Testimony of Robert D. Vick*

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A. I think I was one time over to his — where he lives over here at the Capital Towers.

Q. Where?

A. I believe it was the Capital Towers.

Q. Capital Towers. Where else have you been with him?

A. I may have seen him some place else, Mr. Norman. I have seen him a lot of times.

Q. Can you recall any of the other places?

A. Not offhand. I may have. I saw him in Washington, D.C.

Q. Now, then, Mr. Vick, as I understand you to tell Mr. Hooker, you have never accepted any money from the government, and particularly the Department of Justice for the work you have done in this case?

A. That is correct.

Q. Nor has any member of your family accepted any — I mean your immediate family, of course — any money from the United States Government, or anybody representing the Government, or the Department of Justice, for your work, for you?

A. No, sir, they have not.

Q. They have not?

A. No, sir.

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Q. Also I believe you told Mr. Hooker that you had never been promised any reward for your participation or work in this case? That is right, is it not?

A. That's right.

Q. You have told him that you have never been promised any reward directly or indirectly by anyone for the government, or under its direction?

A. That is right.

*Testimony of Robert D. Vick*

Q. You have sworn to that?

A. Yes, sir. (Nodded head.)

Q. You have sworn to Mr. Hooker before the jury, in answer to Mr. Hooker, that you have never been promised any employment of any kind, shape, form or fashion, as a result of your work in this case. You have sworn that, haven't you?

A. That is correct.

Q. And that's true, you say?

A. Yes, sir.

Q. Sir?

A. Yes, sir.

Q. All right. I want to make sure I understand you on it. Now, Mr. Vick, are you still a metropolitan policeman?

A. Yes, sir.

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Q. When is the last time you did any work for the city?

A. I believe it was in November, Mr. Norman.

Q. In November?

A. Or —

Q. '63?

A. Or maybe the last part of October.

Q. How much do you make a month?

A. \$379, I believe it is. \$358.

Q. That's take-home pay?

A. No, sir, that gross.

Q. Have you been getting that all during these months?

A. Yes, sir.

Q. You have been playing golf most of the time, haven't you?

A. I have played some golf.

Q. Practically every day?

A. Not every day.

Q. Two or three times a week?

*Testimony of Robert D. Vick*

A. I have played golf.

Q. Have you done any work for the government since November, at any time whatsoever, or just waiting for this trial?

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A. No, sir.

Q. You haven't done anything for the city, but the city has kept paying you?

A. Yes, sir.

Q. And you haven't done any work for the government. Have you done any work for anybody since November?

A. No, sir, I don't believe I have.

Q. What have you been doing?

A. Waiting for this trial.

Q. Waiting for the trial. Now, the Chief of Police has called you repeatedly to try to get you back to work, hasn't he?

A. No, sir.

Q. He has not?

A. I am home every day and every time he has called me I have answered.

Q. I don't mean that you haven't answered, but I say, he has tried to get you to report back to work, hasn't he?

A. No, sir, I have tried to get to go back to work.

Q. I will ask you if he hasn't called you to get you to report to work and if you didn't call Washington and have Mr. Sheridan call the Chief, and then you were told that you didn't have to come back to work?

A. I didn't call Mr. Sheridan and tell him anything,

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other than the Chief had called me to come to his office. The Chief didn't say what he wanted.

*Testimony of Robert D. Vick*

Q. Well, the Chief on several occasions has called to see if you wouldn't come to work, hasn't he?

A. No, sir. If the Chief wants me to go back to work, he will tell me to go back to work.

Q. I will ask you if when he called, you wouldn't call Mr. Sheridan and Mr. Sheridan would call the chief and tell him not to let you go back to work yet?

A. I don't know what Mr. Sheridan did. I called Mr. Sheridan, yes.

Q. I will ask you if you haven't made a statement within the past 30 days that you didn't have to go back down there to work at the police department, that Chief Kemp had tried to get you to come but that all you would do would be to call the government, and Mr. Sheridan would call the Chief, if he would call you any more? Have you made a statement like that?

A. No, sir, I don't recall it.

Q. You don't recall it?

A. No, sir.

Q. You would recall it if you had made a statement like that, wouldn't you?

A. I probably would.

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Q. Have you made a statement like that?

A. I don't recall it. I may have. I have a lot of joking statements.

Q. You would joke about a thing like that, too?

A. If I made it, it was a joking statement.

Q. All right. We will get to that later on.

Now, then, Mr. Vick, have you made a statement — has anybody connected with the Department of Justice promised you that they would guarantee the education of your children if you came through in this case?

A. No, sir.



*Testimony of Robert D. Vick*

Q. Have you ever had any conversation with any living human being about anything like that?

A. Mr. Norman, I may have. My friends and everybody else thinks that I got a big pile of money out of this thing, which I didn't, and they have all said something to me about it, and probably I have made some comment.

Q. You wouldn't know whether you have told anybody

A. I don't — if you will tell me a specific case, I will tell you whether I have or not.

Q. I want to know whether you have told anybody that as a reward for your participation in this Osborn prosecution that the education of your children would be taken care of. Now, you know whether you have told that to anybody or not. Have you not?

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A. I may have jokingly said that to somebody, Mr. Norman, but I don't recall it, Mr. Norman.

Q. You think maybe you have told that and you would be joking with that, too.

All right. Let me go a little further. Have you told anybody that your pension — that if you lost your job, if the city fired you as a result of your participation in this, when they got to it, that your pension would be guaranteed if you continue through and participated in this prosecution? Have you told anybody that?

A. No, sir.

Q. And you don't think you have told them that even jokingly?

A. I don't think so, Mr. Norman.

Q. Well, you would know whether you had made such a statement as that or not, wouldn't you, Mr. Vick.

A. I don't recall it.

Q. Sir.

*Testimony of Robert D. Vick*

A. I don't recall it, no.

Q. Don't you think you would recall if you had made a statement involving people like this?

A. Well, I may have, but —

Q. Well, if you did —

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A. I don't think that —

Q. If you made it, was it the truth or was it false?

A. If I made it, it was false.

Q. Well, why would you have made a false statement like that?

A. I don't know; just a little jokingly.

Q. You are just a little scared we are going to show you made those statements, aren't you?

A. No, sir, I would be glad for you to show it.

Q. We will show it.

Now, then, I am going to ask you if you have propositioned anybody within the last 30 days for an amount of money to change your testimony in this case?

A. I haven't propositioned anybody. It has been discussed, Mr. Norman.

Q. Who did you discuss it with?

A. Well, I discussed it with Mr. Robbins, and Mr. Nolan and Mr. Childress, and I believe a Mr. Green.

Q. Who are they?

A. I don't know, Mr. Norman, but I am told and understand and believe that —

Q. You know you don't know Mr. Childress.

A. I know Mr. Childress.

MR. NEAL: Just a minute. May the witness finish his

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answer, please?

MR. NORMAN: Don't just — we will get to it.

*Testimony of Robert D. Vick*

A. I know Mr. Childress well.

BY MR. NORMAN:

Q. He has been a friend of yours how long?

A. A long time, several years.

Q. All right. Did you make a statement like that to him?

A. Yes, I think I may have.

Q. Well, tell us what you told him about your price for your testimony in this case.

A. I don't know. We were trying to catch some people that we thought were going to offer me a bribe, and I told him. And told these people anything that would encourage them, and reported it —

Q. Have you told Mr. Hooker and Mr. Neal about this?

A. Yes, sir. And the Department of Justice.

Q. Well, tell the jury now what that was. You haven't told it so far, but I want to dig it out of you.

A. Nobody has asked me.

Q. I know they didn't ask you, but I am going to ask you.

A. All right.

Q. Go ahead.

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A. You want the whole story?

Q. Yes, sir, everything you know about it.

A. About last March, Mr. Childress — I was out with my wife and another lady from the church, they were doing some work and I was taking them in my car. Mr. Childress came by. I knew him. I knew he worked for the Teamsters. He was a friend of mine and had been for a long time. And he made some joking remark about, "I saw your picture in the paper," or something like that.

And I said, "This happens sometimes in police work," and something like that.

And he said tha he had been to Indianapolis, employed as a Teamster, that —

*Testimony of Robert D. Vick*

Q. By the way, you used to live in Indianapolis two years, I believe you told Mr. Hooker?

A. Some time, yes.

And Mr. Childress then came over to my house that morning, we talked, and discussed the case, and —

Q. When was this now, Mr. Vick?

A. I believe it was in March, Mr. Norman.

Q. March of what year?

A. This year.

Q. This year?

A. Yes, sir.

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Q. All right. Go ahead.

A. And I told Mr. Childress that I didn't have any money, that I was broke, in which was the truth.

Q. That's the same thing you told Tommy Osborn, and the same thing you told Sheridan, wasn't it?

A. I don't know that I told them that, but I told Mr. Childress that. And I told him that the work — I had never been paid for the work I done in the Miller — in Judge Miller's court. That I had submitted a bill.

And he said, "I know, Tommy and I can get your money for you, I think."

I said, "If you can I will give you part of it."

And he said, "All right."

Q. Wait just a minute. Was this after you had caused this man to be indicted, put the recorder on your back?

A. Yes, sir.

Q. And you were trying to get your money from him after you had done that to him?

A. He said — I had submitted a bill for work prior to that.

Q. Go ahead.



*Testimony of Robert D. Vick*

A. And he said he thought that he could get it. And I said, "All right, and I will give you some of it if you do." And then he — I didn't never — he went to see Mr. Osborn, according to him, what he told me, and that Mr.

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Osborn had said something to him about getting to me as a witness, and this, that, and the other.

Q. What did that man — He said Mr. Osborn had told him to get to you as — Tell us just everything that was said, tell the whole story.

A. Well, I don't recall all that was said. You can call him as a witness.

Q. Mr. Vick, you mean that the man that you are testifying against here, the man that was to give you a — that just for a clear bill of health you took a recorder and put on your back, after he had befriended you, you mean that after you had done this to him, that he sent someone to see about getting to you as a witness?

A. That was my understanding.

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Q. Don't you know you were the one who was getting Childress to go to him?

A. No.

Q. — From the very beginning?

All right, go ahead and tell us the rest of what happened.

A. Well, Mr. Osborn said he wouldn't pay me the money, and needed the money I didn't think Mr. Childress would get the money, in the first place. But if he wanted to go, it was all right with me.

MR. NORMAN: Yes?

A. (Continuing) Then Mr. Childress said he thought he could get it from the Indianapolis Local, from Hoffa. I said, "All right with me, the same proposition, if you go

*Testimony of Robert D. Vick*

get the money I will take it.”

Q. All right. No question you were a Government agent now?

A. Yes.

Q. And Government witness?

A. Yes.

Q. In fact, you are being guarded by a Government marshal now, aren't you?

A. Yes.

Q. Around the golf course and around your home?

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A. Yes, sir.

Q. All right. Now, you are telling us you had a friend of yours to go to some Teamsters Union to get you some money, you were broke?

A. He said he thought he could. I said, “Go ahead.”

Q. Even though that was the status then you were about — you testified before?

A. Money they owed me for some work I had done for Mr. Hoffa, Mr. Norman.

Q. All right, go ahead.

A. He then called, arranged to meet us at Bowling Green. And I reported all this to Walter Sheridan as it happened.

He may be able to give you some more details.

Q. No, we will get to Walter Sheridan. We will get to him later. We will stay on Vick.

A. Yes.

Q. All right. You asked your friend Childress — you wanted to get money, even though you were a Government witness, guarded by the marshal, you wanted the money, didn't you?

A. Yes, sir, I needed it.

*Testimony of Robert D. Vick*

**Q. You say he set up some friend to meet in Bowling Green?**

**A. It was my understanding.**

**Q. Well, did you go?**

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**A. No, sir.**

**Q. Who went?**

**A. Mr. Childress.**

**Q. Did you send him up?**

**A. I didn't send him up. He went. He said he thought — He said he was going, thought he could get the money. I said, "All right, go ahead.**

**Q. Did then he go?**

**A. My understanding, he did.**

**Q. Did he come back to see you?**

**A. Yes, sir.**

**Q. What did he tell you when he came back?**

**A. It is my understanding he met a man up there by the name of Robbins, who was secretary of it.**

**And before he went, I called Mr. Sheridan, told him about the meeting Mr. Childress was supposed to have with these people, told Mr. Sheridan I was trying to get my money, I needed it.**

**He said, "I don't think you ought to do that."**

**I said, "I need the money and they owe me the money."**

**Q. Mr. Sheridan told you he didn't think you should, didn't you?**

**A. Yes, sir, he did.**

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**Q. In fact, he didn't like it?**

**A. No, he wasn't happy.**

**Q. But you told him you needed the money and you were going to try to get the money, didn't you?**

*Testimony of Robert D. Vick*

A. Yes, sir.

Q. All right. You said your friend went up. And when he came back, what happened?

A. Well, he told me he met with a Mr. Robbins, and a Mr. Nolen, I believe, maybe Mr. Green, one of them, up there.

Q. Do you know those people?

A. No, sir.

Q. Never had met them?

A. Never had met them in my life.

Q. All right. What else did he tell you?

A. And that they wanted to talk to me, I think, and if I would make a trip to Indianapolis, or somewhere, they would get my money. And I think they wanted to talk to me to try to get me to change my testimony some way.

Q. Don't tell us what you think. Tell us what he said.

A. Well, this is essentially that.

Q. This is a friend you sent —?

A. I didn't send him, Mr. Norman.

Q. You got him to get your money. You just told the

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jury, didn't you?

A. He offered to go, and I let him.

Q. All right. Did you go to Indianapolis?

A. Yes.

Q. And that is a place you used to live?

A. Yes, sir.

Q. And were these people from Indianapolis?

A. Took a United States marshal with me, and reported this.

Q. Who did you take with you?

A. Reported this trip.

I believe his name is Greenwall. You mean the United States marshal?



*Testimony of Robert D. Vick*

**Q.** You said you took a United States marshal. And what is his name?

**A.** Mr. Greenwall.

**Q.** Mr. Greenwall?

**A.** Of Jacksonville.

**Q.** When did you go up there?

**A.** I am not sure of the date, Mr. Norman.

**Q.** Can you give us some idea? This year — last year?

**A.** This year.

**Q.** When?

**A.** March — April — May, sometime in there. May, maybe.

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**Q.** This is just May 25th. You know whether you went up to Indianapolis this month, last month, the month before, don't you, Mr. Vick?

**Do you have any objection to telling the truth?**

**A.** I don't have any objection at all, Mr. Norman. Trying to tell you.

**Q.** Tell me when you went to Indianapolis?

**A.** Trying to tell you the best I know to, the best of my memory.

**Q.** When did you go to Indianapolis?

**A.** I believe in May.

**Q.** This month?

**A.** Well, March, I mean — in April. I am not sure the exact month, Mr. Norman. Maybe somebody else —

**Q.** Did you go this month — May?

**A.** No, I didn't go — I may have. I am not sure. I have made some other trips up —

**Q.** Mr. Vick, you want to tell the truth, don't you?

**A.** Yes, sir, try to do the best I can.

**Q.** Could you tell us whether just a few weeks before this trial of this man you are testifying against —

*Testimony of Robert D. Vick*

whether you went to Indianapolis this month or not, or whether ——— you don't mean to say you don't know whether it was this month or March?

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A. I don't believe that I went to Indianapolis in May, Mr. Norman.

Q. Did you go in April?

A. I believe it was in April.

Q. All right. And a man by the name of Greenwall went, you say went with you?

A. Herman Greenwall.

Q. How did you go?

A. We went in Mr. Greenwall's car.

Q. And where did you leave from?

A. Nashville.

Q. What time did you leave?

A. I believe it was a Friday afternoon. I am not sure.

Q. In the afternoon?

A. Yes, sir.

Q. And did you drive straight to Indianapolis?

A. Yes.

Q. Where did you stay up there?

A. With my sister.

Q. Did you talk to anybody?

A. Yes, sir.

Q. Who did you talk to?

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A. Sir?

Q. About getting money up there?

A. Yes, sir.

Q. Who did you talk to?

A. Talked to Mr. Robbins and Mr. Green and Mr. Nolen.

Q. What did you say to them?

*Testimony of Robert D. Vick*

A. I don't recall exactly the conversation, but before we went \_\_\_\_\_

Q. Did you tell them you came up to get money?

A. Before we went, I told Mr. Childress, and Mr. Childress — I did say that if anything was said about me changing my testimony or bribe of any kind that \_\_\_\_\_ and we fully expected it \_\_\_\_\_ that I was going to find out who was at the bottom of it and try to catch him, and would he help me. And he said yes.

Q. On the contrary, didn't you go up there — and haven't you been to other places trying to huckster to first one place and another your testimony?

A. No, because the Department of Justice knew every trip I made.

Q. I didn't ask you what the Department of Justice knew. Asked you what you have done.

A. No, sir.

Q. And haven't you set a price on it at more than one

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place?

A. I may have told them anything, Mr. Norman. Could you give us who — part of this — the price — the place?

Q. You could recall it, couldn't you?

A. I don't know right offhand.

Q. Isn't it something that you know, what places, isn't that correct?

A. What occasion are you referring to?

Q. Have you been to Indianapolis more than once?

A. No, I have been to Louisville. And they have been to Nashville.

Q. Talking about Indianapolis?

A. I believe Mr. Nolen said this was — in Mr. Nolen's office.

*Testimony of Robert D. Vick*

Q. And who did you meet there?

A. There were three men there was introduced to me as Mr. Green and Mr. Nolen and Mr. Robbins with the Indianapolis Teamsters.

Q. That is the time you were trying to get the money?

A. Yes, sir, seven hundred some-odd dollars.

Q. What did you tell him about getting your money? What did you say?

A. I told them I wanted it, and give it to Childress.

Q. You told them then, there that?

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A. Yes, sir.

Q. All right. What did they say about it?

A. I recall, Mr. Norman, that he — I think the first thing — I think he said I could get it, but he said a lot of other things, too. You want to know what I can remember about it?

Q. That is what I am trying to get at there, Mr. Vick.

A. He said he thought I knew something that might help Jim. I told him —

Q. Jim. Now you are talking about Hoffa?

A. I assumed that he was.

Q. You knew who he was talking about, didn't you?

A. I assume that he was. He didn't say.

MR. NORMAN: All right.

A. (Continuing) And I told him I didn't think anything or anybody could help Mr. Hoffa. And he and I — Mr. Childress and myself — played this thing along because — keeping the Department of Justice informed — and maybe we could find out who was at the bottom of it. They had I believe —

Q. And did you tell the Department of Justice where you were going to get it?

A. Yes, sir.



*Testimony of Robert D. Vick*

Q. And did they go there with you?

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A. United States Marshal went with me.

Q. And ———

A. (Continuing) The FBI may have been there — someone there.

Q. When you went to see Osborn, you took a tape recorder.

When you told the Department of Justice you were going to those people about money, did you take a tape recorder up there, too?

A. No, sir.

Q. That is, to get your money ———?

A. No, sir. I think I had had a little publicity about a tape recorder, and I seriously doubted I could get in with a tape recorder, Mr. Norman.

Q. Well, anyway, you felt you wouldn't make a tape?

A. No.

Q. But you know you were taped at that meeting?

A. I don't particularly care, Mr. Norman.

Q. Well, we will find out about that.

And I will ask you if you didn't get down to facts and figures, not only there, but on three other occasions and try to sell your testimony at different prices? Or do you deny that, Mr. Vick?

A. No ——— yes, I deny that. I encouraged these gentlemen and tried to find out who was at the bottom of it.

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Q. Not trying to find out who was at the bottom of it. I am talking about what you have done and said yourself.

A. I have never taken a penny from either of these gentlemen.

*Testimony of Robert D. Vick*

Q. I didn't ask you that. I asked you if you ever had mentioned several prices?

A. I don't know. I encouraged them.

Q. I didn't ask you that. I ask you did you or did you not make any statement of price for your testimony?

A. In an effort to get at the bottom, I may have, Mr. Norman.

Q. Did you or did you not? You just said you didn't know whether you did. And did you or did you not?

You would know whether you did or didn't.

A. I don't recall me ever saying I would do this — such thing.

Q. Mr. Vick, would you tell the Court and jury under oath that you wouldn't recall whether you told somebody you would sell your oath in a court of justice, and for how much?

A. No, they were offering me various amounts.

Q. I didn't ask you that. I asked you if you told them —?

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A. I don't recall it, Mr. Norman. Now, we had a lot of discussions about this thing, and something could have been said by me.

Q. And I ask you if you haven't done it at various places and at various prices?

A. No.

Q. You positively deny it under oath?

A. But I said whatever I could to encourage these gentlemen to get to the bottom of it.

Q. Well, I will ask you it then again so that we can qualify it.

Did you or not ever make anybody a price for your testimony under oath in this court?

A. Mr. Norman, I may have. I don't recall it.

*Testimony of Robert D. Vick*

O. Now, you say ———

A. I don't recall it.

Q. Mr. Vick, you are a grown man and a man of experience and an officer. You mean you would make somebody ——— you might have made somebody a proposition and a price concerning to sell your testimony, but you can't remember whether you did or not?

You don't mean that, do you?

A. Here again, Mr. Norman, we have the same situation that we had when I went to Mr. Osborn with the tape re-  
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order. I was an undercover agent, so to speak, and was trying to get information.

Q. So you were an undercover agent back there?

A. At Indianapolis.

Q. Well, you just said "When I went to Mr. Osborn ———." You admit it now.

Go ahead.

A. And I did whatever I could to ——— this was all reported to the Department of Justice when it occurred, as it occurred, and I did whatever I could to convince these people that I was sincere.

Q. Then you wanted to be able to get information ———?

A. To get at the bottom ———.

Q. I will repeat.

A. I may have.

Q. Did you make them a proposition at anytime, a price for your testimony?

A. I don't recall, Mr. Norman, but I may have.

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Q. Mr. Vick, since the adjournment we have asked for and received from the Government certain statements or reports of statements which you have made to them from

*Testimony of Robert D. Vick*

time to time, and I want to ask you about some of them.

I will ask you if as early as February 1963 — not in July of 1963, as you state, but — have testified to — but as early as February 1963, you were not in contact with agents of the Department of Justice, Federal Government, and reporting your activities in relationship with Mr. Osborn and others?

A. Well, I thought when you mentioned July, Mr. Norman, you were talking about Mr. Sheridan.

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Q. No.

A. The FBI has talked —

Q. I asked you about Mr. Sheridan and I said anybody connected with the government and particularly the Department of Justice. And you said not before July, didn't you?

A. The FBI has talked to me several times.

Q. Well, you know I have got these reports in my hand now, don't you?

MR. HOOKER: If Your Honor please, we submit that the record will show Mr. Vick's answer was about Mr. Sheridan.

MR. NORMAN: It will also show that I asked him if he had talked or had any connection with any person connected with the government or the Department of Justice before July, and he said no.

A. I didn't recall it that way, Mr. Norman, and don't now.

MR. NORMAN: The jury will remember which way it was.

THE WITNESS: I had talked to the Bureau — the Federal Bureau of Investigation agents. They had first came to my home and talked to me a long time ago.



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BY MR. NORMAN:

Q. Didn't you tell Mr. Hooker in this case that the first time you had contacted the Department of Justice was in July 1963? Didn't you tell him that in this room this morning and didn't you tell me?

A. Well, if I did I was talking about the FBI.

Q. Well, regardless of that, when did you start reporting to the government, to the Department of Justice?

A. I think that I made one report the early part of last year to a Federal Bureau of Investigation agent about a trip that Mr. Ramsey and I made to Columbia, in connection with the Grand Jury investigation.

Q. Didn't I ask you and didn't you say that the reason you wanted to talk to the Department of Justice and tell them about these things is because you were afraid you were going to lose your job, and you went down to Mr. Sheridan to get a clean bill of health, and when he got it to you, that's when you started? Didn't you tell us that?

A. Well, I don't know Mr. Norman. You are trying to say that I started as an agent or something, at a particular time, and I just don't have any recollection of — and didn't then see it as such, and don't now.

Q. I asked you when you first made the offer to turn in this information to the government, to the Department

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of Justice, and didn't you tell me it was in July when you first talked to Mr. Sheridan about it?

A. That is correct; that's the first — you asked me something about talking to him.

Q. That's the first time you ever made an offer to act as a government agent?

A. Well, now, I don't know. At the time Mr. Osborn and I had discussed the early part of the year, I had told him

*Testimony of Robert D. Vick*

that I thought that I could go to work for the government, and he said, "Go ahead."

Q. I am talking about informing on Mr. Osborn. You wouldn't have been talking to Mr. Osborn about informing on him, would you?

A. But I had then talked to the Federal Bureau of Investigation agents about the trip to Columbia, if that is what you are referring to.

Q. Well, I will ask you if —

A. And I told them about it.

Q. I will ask you if on June 14 you didn't report to the Department of Justice that you had been working all of the previous week for Attorney Z. T. Osborn, and if you didn't indicate to them that you wished to cooperate with the government and make any information that you may have available? I will ask you if they didn't inform you that since you were in the employ of an attorney

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for James Hoffa and others who have been indicted in the matter that the FBI would not solicit information from you or direct your activities in this area? Didn't that happen?

A. That is correct; yes, sir.

Q. So you did go to them again in June, before July, and make that offer, didn't you?

A. Well, Mr. Norman, what you say — read, is true

Q. Well, that is what I am asking you if it isn't, in line with what you have already testified.

I will ask you if you didn't tell them back in June that you wished to go to work for Osborn and conduct a private investigation, but desired an arrangement with the government whereby you would be protected from prosecution in return for furnishing the government information? Didn't you do that on June 14?

*Testimony of Robert D. Vick*

A. I may have.

Q. You may have?

A. And I think I did.

Q. Well, why did you tell us then that you had never made any offer to inform, this morning, before July?

A. Well, I didn't intend to tell you that, Mr. Norman, if I did.

Q. Oh, you didn't? All right.

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And I am going to ask you if they didn't tell you, well, you would have to be on your own, and if you didn't tell them in no uncertain words that that would be the last time that you were going to volunteer any information to them until the offer was accepted?

A. Now this may have been done, yes.

Q. May have? You know whether you told them that or not.

A. I am sure it was.

Q. I am reading from their report. Now, is it true or not?

A. This was right after I had made a trip to Columbia with Mr. Ramsey and reported it to them —

Q. I don't care where you had been. Did you make that report? Did you tell the government that?

A. Yes.

Q. That is all I wanted you to say in the beginning.

I will ask you from February 1963 on, regularly, you weren't acting as an agent, making a report to them, long before you went and asked Tommy Osborn for this last employment? Weren't you?

A. No, sir, they had, as you read, said that they couldn't enter into any agreement with me.

Q. But you were making reports to them irrespective

*Testimony of Robert D. Vick*

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of it, weren't you?

A. Other than the report of Columbia, the trip to Columbia, Mr. Norman, I don't recall any. I recall that.

Q. Let me see if I can refresh your memory from the government records about that.

I will ask you if on February 24, 1963, you didn't report to the FBI that Ramsey had visited you personally the previous night, February 23, 1963, and requested you to assist him in an investigation; that Ramsey told you that Osborn and High wanted you to check into the background of Mr. Palmer, foreman of the Federal Grand Jury now sitting in Nashville to hear evidence of alleged attempts of certain individuals to improperly contact jurors in the Hoffa case; if you didn't further report that Ramsey told you they wanted to see if there was something in the background which would indicate he is prone to make threats. You were unsure what this meant except that Ramsey told you that Palmer had threatened 12 witnesses who had testified with indictments if they did not complete testimony.

Did you go to him with that information on that date like their reports say you did?

A. Yes, sir.

Q. Why didn't you tell us about that this morning?

A. Mr. Norman, you didn't ask me about it specifically,

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as you have now. Anything you ask me about specifically, I will tell you.

Q. I asked you if you reported before July.

MR. NEAL: Your Honor, we object to that. I remember the testimony this morning as being when he talked to Mr. Sheridan. He didn't talk about any other matter.



*Testimony of Robert D. Vick*

I think he is inadvertantly misconstruing what the questions were this morning, or else I am misconstruing it.

MR. NORMAN: Mr. Neal, I can't say that I am right and you are wrong. I can only say what I think just as strongly as you believe what you think. And I am sure you believe what you are saying. We will have to leave that to the jury.

THE COURT: Well, the jury will have to be the judge of that, if that is material in the trial of this case.

BY MR. NORMAN:

Q. I will ask you if on February 25, the next day, you didn't go back with another report about your actions in the matter?

A. On the trip to Columbia you are talking about, Mr. Norman?

Q. Well, I will ask you about what it was?

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No, sir.

A. I made a report to the FBI on mine and Mr. Ramsey's trip to Columbia, and concerning Richard Palmer, the 3rd, yes, sir.

Q. Is that the only thing you made a report to them about?

A. That's the onlything I recall offhand.

Q. That's the reason I have to go to the trouble of cross-examining you.

A. If you ask me about something specifically, and if I recall it, I will certainly tell you.

Q. Well, I will ask you if you didn't make another report to them on the next day, February 26, 1963, and it had nothing to do with Columbia?

A. I may have.

Q. What was that about?

A. I don't recall, Mr. Norman.

*Testimony of Robert D. Vick*

Q. Well, you were reporting to them pretty well about everything that was going on from February on, weren't you?

A. No, sir, I didn't make —

Q. What things were you reporting to them and what weren't you then?

A. I believe that Mr. Hillen some time —

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Q. Who is he?

A. A Federal Bureau of Investigation agent.

— Had told me that he would like to hear any violations of the law. The same thing Sheridan told me in July.

Q. When did he tell you that?

A. It was some time in the early part of the year.

Q. So then you started in this work not in July, or October, but you started back in the early part of the year, in February, didn't you?

A. Well, I called — I made a report to Mr. Hillen about this trip to Columbia.

Q. Did you make a report to anybody else besides him?

A. I don't think so.

Q. About anything, except to Mr. Hillen?

A. I am not sure. I may have.

Q. Well, you would remember what FBI agents you were reporting to, Mr. Vick?

A. I didn't talk to Mr. Sheridan.

Q. I didn't ask you anything about Mr. Sheridan. I asked you who, if any others you talked to, or reported to.

A. Now I don't recall that I talked to anybody. I know I talked to Hillen, and told him exactly what happened in Columbia. And that is all I recall that I — he is the

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only person I recall that I talked to.

*Testimony of Robert D. Vick*

Q. All right —

A. Now I may have.

Q. Well, I will read you one back a little earlier with respect to Mr. Sheridan then, and see about it.

A. All right.

Q. Here is one marked Mr. Walter J. Sheridan, Special Consultant to the Attorney General, Nashville, Tennessee, dated June 4, 1963.

MR. NEAL: Excuse me, if Your Honor please. I object to that. He is reading a copy consigned to Mr. Sheridan, not that this man talked to Mr. Sheridan.

MR. NORMAN: I understand a copy of this statement went to Mr. Sheridan.

MR. NEAL: But I understood the statement was, "I will show you one that you made to Mr. Sheridan on June 4."

MR. NORMAN: I don't care whether he talked to Sheridan or whether you sent it to Mr. Sheridan. It shows it got to Sheridan on June 4, and he says he didn't talk to Mr. Sheridan until July.

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BY MR. NORMAN:

Q. I will ask you if you didn't make this: On June 3, 1963, Mr. Vick, 2103 Martha Street, contacted an agent of the Federal Bureau of Investigation and volunteered that Attorney Z. T. Osborn had contacted him and requested him to work on this case."

Now, did you do that?

A. Yes, sir.

Q. Now, had Mr. Osborn contacted you on June 3?

A. If I reported it, I am sure he did.

Q. Now, didn't you tell us this morning that Mr. Osborn hadn't contacted you at that time about this area of employment?

*Testimony of Robert D. Vick*

A. I don't recall that I did.

Q. You don't?

A. No, sir.

Q. Didn't you report further, "Vick advised that he did not know the nature of the work, but knew that it was in connection with the Hoffa jury tampering case involving the defendants recently charged in the Federal Jury indictments in Nashville. Vick did not know who else would be working in the case for Osborn and stated Fred J. Ramsey recently told him that he did not plan to do any private investigation work inasmuch as this was one of the stipulations Ramsey had to agree to before he obtained

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his present job in Davidson County Criminal Clerk's office. Vick advised June 4 he plans to work for Osborn on this case and offered to make any information he might obtain available to the FBI."

Did that happen?

A. Yes, sir.

Q. Now, then, Mr. Vick, you have testified that after you talked to Mr. Sheridan and got the clean bill of health, in return for you reporting and acting for them in reporting, that you were going to try to get employed by Mr. Osborn so that you could be put in position to get the information, that is right, is it not?

A. I didn't think I told Mr. Sheridan that; no, sir.

Q. Well, whether you told him or not, that's what you intended to do, wasn't it?

A. No, sir.

Q. Why didn't you report to the FBI here that you were going to accept employment by Mr. Osborn an report to the FBI about it? Didn't I just read it to you?

A. Yes, sir, but you — as I understand your question, that Mr. Sheridan and I had some plan or plot for me to



*Testimony of Robert D. Vick*

go to work for Tommy Osborn — this isn't true, Mr. Norman.

Q. Well, didn't you just say in this letter that that is what you were going to do?

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A. I did that voluntarily. The statement you are reading about a report I made to Hank Hillen, I never talked to Walt Sheridan in my life then.

Q. I don't care. It was — Was it part of your plan —

A. No.

Q. Let's leave Sheridan or anybody else out of it. Was it part of your plan to get employed by Mr. Osborn so you could make these reports?

Q. No, sir.

Q. Then I will read you right back and ask you if you reported this to the Department of Justice? Now you have just said no to that.

Didn't you report on June 21, "Vick stated that he wished to work for Osborn and conduct a private investigation, but desired an arrangement with the Government wherein he would be protected from prosecution in return for furnishing information."

What do you say about it now?

A. I said that that happened, Mr. Norman.

Q. Well, you told them that's what you were going to do, didn't you, in that letter, in that report?

A. Yes, that report is correct.

Q. Well, is that what you intended to do? Did you tell them the truth about it?

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A. But I had no plot to do anything to anybody. I offered to report illegal violations to them, and I did.

*Testimony of Robert D. Vick*

Q. You didn't say anything about illegal violations. Let me read it to you?

Did you tell the Department of Justice this on June 14

A. I said yes, Mr. Norman.

Q. "Vick stated that he wished to work for Osborn in conducting private investigations but desired an arrangement with the Government wherein he would be protected from prosecution in return for furnishing information."

Did you tell the Government that on June 14?

A. Yes, sir.

Q. Did you mean it?

A. Well, I don't know whether I meant it or not.

Q. Did you intend to do like you say, that you wished for Osborn to employ you so you could report on him?

A. No, I didn't plan it that way, or I didn't —

Q. Well, why did you tell the Government —

A. I didn't even know I would be asked to do anything.

Q. Why did you tell the Government that that's what you wished to do then?

A. The very reasons I have told you this morning.

Q. Well, you did go and ask him to employ you right

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after this, didn't you?

A. I was employed. I don't recall whether I asked him. He asked me and I — originally —

Q. I am not talking about originally. You know what I am talking about.

A. I don't, Mr. Norman. If he asked me or if I asked him. I could very well have asked him.

Q. I will ask you if you didn't make two trips up there and ask him first and he told you no, he had other people working on it, and if you didn't go back the third time and

*Testimony of Robert D. Vick*

tell him you had these bills to pay and he said, "All right, I will give you some work."?

A. I may have, but I didn't have any plot against Tommy Osborn.

Q. I didn't ask you if you had any plot. I asked you if that is what you did.

A. It could well be.

Q. Did you or not?

A. I just can't recall specifically whether he asked me or I asked him. I went to work for him.

Q. Did you go twice and he told you he didn't need you and you went back the third time and told him you were in bad financial shape and needed the work?

A. I don't recall it.

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Q. You won't deny it?

A. No, sir.

Q. Very well.

Now, with this in mind, did you intend to contact any juror, Elliott or otherwise?

A. No, sir.

Q. Well, where did the idea of pretending that you were going to contact Elliott come from?

A. Well, now, I don't know, to be frank with you.

Now, when —

Q. Well, that's what you made up your mind to do, to pretend that you were going to see him, to Osborn, didn't you?

A. Yes.

Q. Now, let's clear this up once and for all: The juror never was contacted by anybody so far as you know?

A. He wasn't by me.

Q. In other words, nothing happened?

A. Not as I know of.

*Testimony of Robert D. Vick*

Q. It was all your pretense, wasn't it, to Osborn?

A. Yes, sir.

Q. All your pretense to Osborn. Well, why was it that you were going to pretend that you were going to contact a juror? Was that to suck Osborn into it?

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A. No sir.

Q. What other purpose could you have?

A. I had reported my original conversation to the Department of Justice.

Q. Yes, sir.

A. And I understood that the Federal Judges had authorized us to — authorized me to go down there and make a tape.

Q. I am talking about long before that. I am talking about when you first went to see Mr. Osborn and talk to him about the juror Elliott.

A. Well, now, In November is the first time we discussed the juror Elliott, and the sequence of events that occurred.

Q. When did you decide to make out like, to Osborn, to pretend to Mr. Osborn that you were going to see, or could see the juror Elliott? When did you first have that in your mind?

A. Well, I don't know any exact time that I decided this was what we were going to do. This is what we did, Mr. Norman.

Q. Had you decided that before you talked to Mr. Sheridan?

A. No, I don't think so. I may have.

Q. Did you talk about the juror Elliott to Mr. Sheridan?

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A. Yes, I reported the conversation I had with Mr. Osborn.



*Testimony of Robert D. Vick*

Q. I am talking about before you talked to Mr. Osborn about Elliott.

A. No. Now wait a minute. I may have talked to Mr. Sheridan about it.

Q. Well, think about that.

A. I had told John —

Q. And you told him that you had a cousin on the jury, and that Osborn might go for that?

A. No, I don't recall it.

Q. You don't recall it?

A. No, sir.

Q. Will you deny it?

A. No, but let me tell you this —

Q. Wait, wait. Do you deny that you talked to Mr. Sheridan about having a cousin by the name of Elliott on the jury, and that you thought since you had been employed by Mr. Osborn that you could talk to him and pretend that you would see him and that Osborn would go in to it?

A. No, sir, I didn't.

Q. Did you have any conversation like that?

A. I don't remember it.

Q. Will you deny it?

A. There was no plan or plot.

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Q. Will you deny it?

A. That there was a plan or plot —?

Q. I don't care whethre you call it a plan or a plot. I just asked you — and you said just a minute —

A. Now —

Q. Did you or did you not talk to him about that?

A. Now, Mr. Sheridan and I could have very well discussed the entire jury panel. And I probably did tell him

*Testimony of Robert D. Vick*

I had a counsin on it. But I did not tell him that I was going to Tommy Osborn about it.

Q. But you did pretend to Tommy Osborn you would go to Mr. Elliott?

A. Yes, sir, I did.

Q. Could never any harm there come out it. You of course knew it at the beginning, didn't you?

A. No intention whatever.

Q. No intention whatever. So the only purpose was to lie to Osborn into believing you would, wasn't it?

A. I suppose that is correct.

Q. So, in order to build that a little stronger, to suck him in a little further, you then went back and told Osborn you saw Elliott?

A. Yes.

Q. And did you suck him in, did you?

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A. No, sir.

Q. Why did ———?

A. The Department of Justice was trying to discover evidence of an effort at jury tampering, and I did go to see him.

Q. It was false?

A. Didn't intend to suck him in.

Q. It was false?

A. Yes.

Q. But you told Osborn you had seen him?

A. Yes, sir.

Q. Well, the reason was to suck him in?

A. Find out what he was going to do.

Q. Find out what he was going to do?

A. In fact, the Department of Justice didn't really believe we had had this conversation.

Q. Do what?

*Testimony of Robert D. Vick*

- A. Mr. Osborn and I had had this conversation.  
Q. The conversation \_\_\_\_\_?  
A. Concerning Mr. Elliott, November 7th.  
Q. Didn't believe you had had it, is that right?  
A. Yes.  
Q. Didn't believe you had had it on \_\_\_\_\_ didn't believe you had had it on November 7?

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- A. 8th, or whatever it is.  
Q. Isn't that when they sent you up there with a tape recorder on your back?  
A. No, this was when I didn't have the tape recorder.  
Q. You didn't have the tape recorder on November 8th?  
A. Well, whatever \_\_\_\_\_ the original conversation there.  
Q. Did you have the tape recorder on November 8th? Would you know that?  
A. Now, the first time I talked to \_\_\_\_\_  
Q. When they sent you \_\_\_\_\_ don't you know you had a tape recorder on November 8th and even as you testified in here?  
A. Well, now, I may have well then. But as to the original conversation I had with Mr. Osborn, I didn't have a tape recorder.  
Q. Oh! Now, when you went back and talked to Mr. Osborn, you said "I have been to see him" didn't you?  
A. Yes.  
Q. That was all a lie wasn't it?  
A. Yes, it was, Mr. Norman.  
Q. Why did you tell Mr. Norman that lie that you had been to see him?  
A. Well, I started out to tell you there before, Mr. Norman.

*Testimony of Robert D. Vick*

Mr. Sheridan and I agreed that there might be some attempts to tamper with the jury, and we wanted to see if this was an attempt to tamper with the jury.

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Q. But you would not have attempted \_\_\_\_\_

MR. NEAL: Your Honor, just a minute.

Your Honor, I ask that \_\_\_\_\_ he asked him why, and he has a right to answer.

MR. NORMAN: All right, I think he was \_\_\_\_.

THE COURT: Let him answer.

Q. Go ahead.

A. And it was necessary, Mr. Norman, to follow this through to see if this was a legitimate attempt to tamper with the jury.

Q. It couldn't be a legitimate attempt to tamper with the jury because you were the one going to do it, and you have already told us you didn't intend to do it?

A. I was intending to find out \_\_\_\_\_ I was trying to find out what Mr. Osborn's intentions were.

Q. The only way you ever understood he was going to do it was through you, wasn't it?

A. That is correct.

Q. And you didn't intend to do it?

A. No, sir.

Q. But you sucked him in by getting him \_\_\_\_\_ you lied to him that you were going to do it?

A. I was trying to find out what his intentions were, yes,

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sir.

Q. You were trying to dig his grave and push him into it, then, did you?

A. No.

Q. You had no idea you would hurt him?



*Testimony of Robert D. Vick*

A. Yes, sir. I wish it hadn't happened, wish it hadn't come up, but it did.

Q. As I understand, you did it free, you say?

A. Well, I didn't intentionally set out to do anything to Tommy Osborn.

Q. If you didn't do it intentionally, why did you lie to him about having seen Elliott?

A. Mr. Norman, I have told you, and you know — and should — if you are trying to find out —

Q. I don't know anything about that kind of stuff.

MR. NEAL: If your Honor please, Mr. Vick is entitled to answer.

MR. NORMAN: All right, go ahead.

A. (Continuing) It was necessary — nobody believed that Mr. Osborn was attempting to tamper with the jury — the juror. It was necessary to go through with this in order to prove this.

Q. But nobody — you were the only one going to tamper with it?

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A. Go through with the pretense I am talking about.

Q. Now, you do say it was pretense, what I was trying to get you to do there.

A. I have said that all day, Mr. Norman.

Q. Yes. So your idea and your purpose was to get Mr. Osborn to follow your pretense, then? That's right?

A. No, sir.

Q. Isn't that what you just said?

A. I was trying to find out what Mr. Osborn's intentions were and prove it, and make a case, Mr. Norman.

Q. Make a case?

A. Yes, sir.

Q. In other words, you were trying to make a case on him?

*Testimony of Robert D. Vick*

A. I am a policeman, and you know this.

Q. No, sir, I don't know that. You asked me the question.

A. Well, I have got a badge on me in my pocket.

Q. All right. But you don't work at it. You play golf.

Mr. Vick, I am going to ask you if before you talked to Mr. Osborn, before you went to him and asked him for employment, but after you had talked to the Department of Justice and had been reporting to them for several months, if you didn't go to another lawyer in Nashville, a lawyer by the name of Sam Wallace, and if you didn't ask him —

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— you know who I am talking about? You know Sam Wallace?

A. Yes, sir.

Q. Is he a friend of yours?

A. Yes, sir, I know him.

Q. I will ask you if you didn't go to see him on June the 4th, 1963, in a cafe on Church Street —?

A. This was when, Mr. Norman?

Q. On June the 4th, 1963.

Wait a minute, let me see.

Just a minute. Just a minute, Your Honor.

I will ask you if on January 4th, 1963, you didn't go see —

MR. NEAL: Is that the right date, Mr. Norman? January, '63?

MR. NORMAN: January, '64, I believe.

MR. NEAL: That is after the recording had been —

MR. NORMAN: Right.

Q. If you didn't go to see Sam Wallace, you did not — did you go and talk to him in a cafe on Church Street?

A. Yes, sir, I believe I did.

Q. I will ask you if you did not try to get him ready to

*Testimony of Robert D. Vick*

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go to Mr. Osborn and see what Mr. Osborn would pay you if you would swear that it was not Osborn's voice on the tape recording that the jury heard this morning?

A. No, sir.

Q. You deny that?

A. No, sir. But I will tell you what I did do, Mr. Norman, if you want to know.

Q. All right, tell us.

A. I told Mr. Sam Wallace, as I have told Mr. Hooker and Mr. Neal and Mr. Sheridan and everybody else, that I wished there was something that could be done for Tommy Osborn. And I wish that right now.

Q. Well, you want to help him, is that right?

A. I wanted to help him from the very beginning. Ask the Department.

Q. What did I just hear you say, that you wanted to help him from the very beginning? Did I hear right?

A. I was sorry. I was sorry that I had to be the one involved in this effort to tamper with the jury. And I am sorry of it now.

Q. I will ask you again. Did you go to Sam Wallace and ask him to see Mr. Osborn on January 4, 1964, and ask what Osborn would pay you to swear to the jury that that was not the voice of Osborn on that recording?

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A. No.

Q. Did you or did you not?

A. No.

Q. You did not? All right.

A. But I talked to Mr. Wallace.

Q. You talked to Mr. Wallace several times about this matter, haven't you?

*Testimony of Robert D. Vick*

A. I have known Mr. Wallace a long time, yes, sir.

Q. I will ask you didn't go to Sam Wallace before you came to see Mr. Osborn about working for him?

A. I saw Mr. Wallace a lot of times. I could very well have.

Q. I will ask you if you did not — that is in September of 1963 — that is before you were employed by Mr. Osborn, wasn't it — September of 1963?

A. I believe it was.

Q. (Continuing) — If you didn't take a federal jury list from this court to Sam Wallace's office — this Sam Wallace — this lawyer that you saw you know — and if you didn't tell Sam Wallace that you had a cousin on the jury and ask Wallace if that juror would be worth — he thought it would be worth fifty thousand dollars to Mr. Hoffa?

A. I don't know I could very well have done it. Mr. Wal-  
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lace and I have discussed this.

Q. What do you mean? Do you mean that it is possible that before any of this came up about Mr. Osborn, back in September, 1963, and while you were admittedly working for the Government as an informer, that you went to another lawyer and told that lawyer that you had a cousin on the jury, and asked him whether or not that juror would be worth fifty thousand to Mr. Hoffa? You mean you might have done that?

A. No, I don't say I made the statement.

Q. You said just a minute ago you might have done it?

A. I have discussed this jury list and a lot of other jury lists and a lot of other lawyers and a lot of other jury lists, Mr. Norman. It is perfectly possible I might have talked to ——— I don't think I ever asked Mr. Wallace what he thought it was worth.



*Testimony of Robert D. Vick*

In the first place, since you have brought Mr. Wallace up, since I hoped you wouldn't, and was sorry you did — I wasn't convinced and I don't think anybody else was, if Mr. Wallace had any part — if there had had been any jury tampering, and if Mr. Wallace had any part in it.

Q. I am not saying if —. Are you saying Mr. Wallace was getting anything out of it?

A. No, sir.

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Q. I don't know what you are talking about there.

A. I don't even want Mr. Wallace's name brought in.

Q. Why?

A. I don't want to get any more people — any involved more than — than already there.

Q. You are not saying Mr. Wallace is involved, are you?

A. No.

Q. I ask you if I didn't ask you just a minute ago —?

A. And I said no.

Q. Didn't I ask you just a minute ago if in September, before you talked to Mr. Osborn about employment, but while you were already working as an informer for the Government, if you didn't go in to Mr. Sam Wallace with a federal jury list and tell him that you had a cousin on the jury and ask him if that juror would be worth fifty thousand dollars to Mr. Hoffa, and didn't you tell me you may have?

A. I don't know. I talked — what I meant to say to you, Mr. Norman, is that I could have discussed that jury list with Mr. Wallace, yes.

Q. I didn't ask you —

A. (Continuing) If I had it at that time. I am not —

Q. I didn't ask you if you discussed the jury list with Mr. Wallace.

*Testimony of Robert D. Vick*

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Did you or did you not go to Mr. Wallace, as I asked you a minute ago, in September, before you started to work for Mr. Osborn, and while you were working for the Government as an infome, with a juy list in your hand and say to Mr. Wallace, "I have got a cousin on the jury. Would that be worth fifty thousand dollars to Mr. Hoffa?"

I thought that you told me that you may have done it.

Now what do you say about it?

A. Now I say that I was trying to find out whether Mr. Wallace had any connection with the Hoffa case. He had said to me he did not. And perhaps I made some statement to try to find out whether he did have some connection there or not. And he didn't have any.

Q. Do I understand you now to say you were trying to trap Mr. Wallace in something?

A. No, sir, I was trying to find out \_\_\_\_\_.

Q. Did you think Mr. Wallace had something to do with it?

A. It was a probability, but don't think he did.

Q. What made you think so?

A. He had indicated that he wanted to work on the case.

Q. He had indicated that he wanted to do some work?

A. You know, nothing wrong, Mr. Norman, in it.

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Q. I am talking about something wrong. Did you think Hoffa would pay fifty thousand dollars for your cousin on the jury? Did you talk about \_\_\_\_\_?

A. Now, I don't recall that I made that statement to Mr. Wallace.

Q. Do you deny making it?

A. No, sir.

Q. Why would you have made it, if you did?

*Testimony of Robert D. Vick*

A. To try to find out whether Mr. Wallace was working for the Hoffa people or not.

Q. Is there anything else you went —

A. If I did it.

Q. If I did it, you want to say in explanation of this?

A. No, sir, except I am convinced then and am now that Mr. Wallace didn't have anything to do with this case in any way, shape or fashion.

Q. All right. Didn't you tell Mr. Osborn when you went up there on one of the first or second or third times to try to get employed by him, after you had made your arrangements with the Government, that you were in bad shape and that you —

MR. NEAL: Your Honor, excuse me just a minute.

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I am sure — I object to what I am sure is an inadvertent misquotation of the record about arrangements with the Government.

The testimony has been by this man that the federal government never asked him to do anything in his life but to report any statement about illegal activities.

MR. NORMAN: May it please the Court, that is his version of the record on it.

MR. NEAL: That is not the testimony in the record.

MR. NORMAN: I don't intend to take his version of the record, Your Honor. It is in the record.

MR. NEAL: He wants to ask the question — he is projecting there what is not in the record, talking about arrangement — it is just not part of the record. I don't think he ever referred to it in the record.

Q. Didn't you have an arrangement with Mr. Sheridan that he would give you a free bill of health in return for your giving him the information of illegal activities?

A. No, sir.

*Testimony of Robert D. Vick*

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Q. Haven't you told the \_\_\_\_\_?

A. The arrangement \_\_\_\_\_ I didn't have any arrangement with Mr. Sheridan, no.

Q. Whether you call it arrangement or agreement \_\_\_\_\_?

A. But let me tell you. Let me tell you.

Q. He would give you \_\_\_\_\_

A. He would give me a clean bill of health — he had told me that he would give me a clean bill of health. So he asked me if I would report any illegal activities to him.

Q. He asked you if you would report any illegal activities to him?

A. And I told him I would.

Now, if that is arrangement, you have an arrangement.

Q. All right. I ask you if on one of these occasions when you went to see Mr. Osborn in October to get employment, if you didn't tell him you had to do something to get some money, that Sheridan was going to \_\_\_\_\_ and I don't want to use the language you used at the moment, but it meant get you fixed. Didn't you do that?

A. I may very well.

Q. Don't you know the very tape that was read to the jury this morning as you sat in the witness stand had a reference in it — a nasty, filthy reference — about

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what Sheridan was going to do to you, that meant he was going to get your job?

Don't you know the very tape this morning had it in there?

A. I don't know that I was referring to Mr. Sheridan. I may have said the local people here — I worked for government, of course — weren't going to have anything to do with anybody that had anything to do with the Hoffa case.



*Testimony of Robert D. Vick*

Q. Didn't you tell Mr. Osborn Sheridan was going to get your—blank—and you had to do something to get money some way?

A. I don't think I said it.

Q. Will you deny it?

A. I don't deny it, sir, but just don't recall was referring to him.

Q. All right. Did Mr. Sheridan ever tell you in your conversations with him that in order for the Department of Justice to convict Hoffa in Nashville that they had to get rid of Tommy Osborn, the Nashville lawyer?

A. Who said this, now?

Q. Did Mr. Sheridan ever make the statement to you — did you ever make the statement to Mr. Sheridan?

A. I don't think I did.

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Q. Did you ever make the statement about that Mr. Sheridan told you that?

A. Well, now, I don't know.

Q. Well —

A. If you will ask me about a specific person and date, I will be glad to answer it, Mr. Norman.

Q. Why —

A. (Continuing) But you must surely know that six months have passed, and I have had a lot of conversations with a lot of people, my friends, somebody else — might have said something, now, about it, Mr. Norman. I don't know.

Q. Mr. Vick, don't —

A. If you want to ask me a specific question about a specific place and date —

Q. It sounds mighty like to me, Mr. Vick, your lawyers have been telling you what the law is.

MR. NEAL: I, for one, Your Honor, resent that.

*Testimony of Robert D. Vick*

THE COURT: Well, that is not proper cross-examination, Mr. Norman.

A. I want to tell you the truth, Mr. Norman. If you will ask me a specific question about a specific place and date—

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MR. NORMAN: Your Honor, I don't care about the protestations about telling the truth. The jury will determine that when they seek the truth out there.

Q. I will ask you this. Did you ever tell anybody that Mr. Sheridan told you that they had to do something to get rid of Tommy Osborn or they would never be able to convict Hoffa because Tommy Osborn was too good a lawyer?

A. I don't remember that I made this statement.

Q. Are you denying you made it?

A. No, sir.

Q. You mean you don't remember if you did make a statement like that, Mr. Vick?

A. Well, Mr. Norman, I am trying to explain to you that I have talked to many people, my friends and otherwise, about this case. Some small remark may have been made. Now, I don't know.

Q. Would you call that a small remark that you told somebody that Mr. Sheridan told you that?

A. Well, that statement may have been made. I don't deny it, just don't remember.

Q. Why would you be making a statement like that if

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Mr. Sheridan hadn't told you that? Would you be making it up to tell something to somebody?

A. I am sure I wouldn't have.

Q. Don't you think you had told somebody that?

A. I doubt it.

*Testimony of Robert D. Vick*

Q. You wouldn't be misrepresenting that, though?

A. It is impossible for me to remember everything I said, Mr. Norman. And I think I said that if you will ask me about a specific person and a date, Mr. Norman, I will tell you if I could.

Q. Well, you mean if I call the name, it might be you might remember you told him that, but you can't remember now telling anybody that?

A. Well, the date or something to refresh my memory, I will be glad to, if I did it.

Q. Well, I will ask you, this year, on Tuesday, May 5, in room 324 at the Holiday Inn here in Nashville, Tennessee, you made that statement?

A. Yes, sir.

Q. Did you make the statement?

A. Yes, sir. I could very well have made it.

Q. Did you make it?

A. I could have done it.

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Q. You just got through telling the jury you had not made it a half a minute ago?

A. I don't recall about that statement but the men ——— I will tell you about that, if you wish.

Q. Didn't you just get through telling the jury you hadn't made it?

A. Yes, sir.

Q. Do you recall it after all?

A. Not exactly.

Q. Well ———

A. Well, the reason, if I may have said it to the men you are referring to at the Holiday Inn — I may have very well said it.

Q. Did you remark anything like that?

*Testimony of Robert D. Vick*

A. If you all want to go into the whole matter, we will go into it.

Q. I am asking you about that. Do you remember?

A. I am telling you I don't remember it, Mr. Norman.

Q. But you don't deny it?

A. No, sir.

Q. If you made that statement, is it true or false?

A. It was false if I made it.

Q. Why would you have lied to somebody about it?

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A. Well, in this particular instance you refer to about the Holiday Inn, I was talking to Mr. Robbins — Mr. Nolen, I believe.

Q. Do I understand you believe you were lying to him?

MR. NEAL: Excuse me just a minute, Your Honor. He has asked why he made a statement. He is entitled to explain.

MR. NORMAN: As I understand, he said he talked to Nolen. We don't need a suggestion, Your Honor please, to the witness by counsel.

MR. NEAL: Your Honor, I am not suggesting anything to the witness.

There isn't any proof in this record I have ever suggested anything to him. We come down to this. The witness —

Your Honor, I do have an objection, and think I am entitled to have it ruled on.

THE COURT: Well, I don't believe the witness — let me give you an instruction, Mr. Vick.

You have testified in answer to questions you have been asked there. Try to answer the question directly, you understand.

THE WITNESS: Yes, sir.

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*Testimony of Robert D. Vick*

**THE COURT:** Yes or no, if possible. Then you have a right to explain your answer.

**THE WITNESS:** Yes, sir.

**THE COURT:** All right. We can get along.

**Q.** Mr. Neal says you would like to say something else. Anything to add? Go ahead.

**THE COURT:** We will get along if you will follow that.

**MR. NORMAN:** What is that?

**MR. NEAL:** I said he may not have finished the answer.

**MR. NORMAN:** He said he might not.

If he hasn't, I will ask him ———

**MR. NEAL:** Go ahead. Finish your answer.

**A.** Well, I have forgotten the question now.

**Q.** If you made the statement, was it false?

**A.** Was false, if I made it.

**Q.** And was it the same type false statement that you told Tommy Osborn about going to see Elliott?

**A.** Yes, sir.

**Q.** Why would you have lied about making a statement about that, which you say was false?

**A.** Now, at the time I made this statement, if I did, and I don't deny that I did, I was meeting with two men——

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actually there were four men in the room —— Mr. Childress, Mr. Nolen with the Teamsters, Mr. Robbins with the Teamsters, and this was a continuation of the meetings that they had had. And I understood that they were trying to get me as a witness, and Mr. Robbins was authorized by Hoffa or somebody to do so. And I was trying to find out who had authorized Mr. Robbins to do this. And I could have told Mr. Robbins anything as I tried to find out what was back of his actions.

**Q.** I will ask you if you and your friend, Mr. Childress, didn't set up these meetings?

*Testimony of Robert D. Vick*

A. I did not. Mr. Childress may have.

Q. One was a meeting with Mr. Childress at Indianapolis to try to get the money, wasn't it?

A. Yes, sir.

Q. And he was acting as agent?

A. I didn't send him. He said he thought he could get it, and I said all right.

Q. Let me get one thing straight. Mr. Children is your friend, isn't he?

A. Yes.

Q. And you certainly would believe anything he said, wouldn't you?

A. No, I wouldn't say I would believe anything anybody

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said. But he is my friend.

Q. You don't believe he would try to hurt you?

A. I don't believe so.

Q. And it is true that he was acting for you and with you?

A. I am sure he was, sir. Don't know what you mean.

Q. And I will ask you if you did not notify some of these people that he was your agent and could talk to them for you?

A. I believe I did some occasion.

Q. You have told these people he was your agent and could talk to them?

A. I don't know whether I told them he was my agent. But they wanted to know if he could receive the money — the seven hundred dollars, and I said yes.

Q. And you did talk to \_\_\_\_\_

A. And he did receive it.

Q. Have you ever been told that \_\_\_\_\_ first, let me ask you this.

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**Testimony of Robert D. Vick**

**Do you have any letter of any kind signed by the Attorney General, Mr. Robert Kennedy?**

**A. No, sir.**

**Q. Have you ever had?**

**A. No, sir.**

**Q. Does any member of your family have such letter in**  
**P. 429**

**their possession?**

**A. No, sir.**

**Q. Have you ever told anybody that you had a letter in your possession signed by Mr. Robert Kennedy?**

**A. I am not sure, don't recall that I ever told anybody that.**

**Q. Now \_\_\_\_\_**

**A. (Continuing) Now, I told \_\_\_\_\_**

**Q. Now, I think you would remember whether you told anybody that, wouldn't you?**

**A. I told Mr. Robbins — Mr. Nolen — this other fellow present at the meeting — I could have very well made that statement to Mr. Robbins, Mr. Nolen — any others.**

**Q. Mr. Childress?**

**A. Trying to find out what their intentions were, Mr. Norman.**

**Q. Taking about \_\_\_\_\_**

**A. (Continuing) I don't recall it, but we were talking, I recall.**

**Q. I am not talking about Mr. Nolen. I am talking about your friend, Mr. Childress.**

**Didn't you tell your friend, Mr. Childress, that you had a letter signed by the Attorney General of the United States which contained a guarantee for the education of your**

**P. 430**

*Testimony of Robert D. Vick*

three boys provided you would go through and stay with them in this investigation?

Didn't you tell your friend Childress that?

A. I don't recall it; but if I did, it wasn't true.

Q. Well, why would you have lied to your good friend and agent Childress about a thing like that?

A. Well, now, let me tell you about that, Mr. Norman.

Q. All right. And take all the time you want to do it, please.

A. When Mr. Childress first met with me — when he and I first met, I knew that Mr. Childress was a Teamster. I knew that he had been working for the Teamsters. And I didn't — Mr. Sheridan had said something to me I think prior to this that he had some reason to believe that some attempt may be made to get me to change my testimony. And it seemed a little odd that I hadn't seen Mr. Childress in about four or five years. He had been in Indianapolis. And he suddenly there comes up, when I know he is a Teamster, know he works for Teamsters. And the first time that Mr. Childress and I met, I reported back to Mr. Sheridan and told him I didn't know whether Mr. Childress had been sent there by somebody or not.

And I asked Mr. Childress if he had. He said he had not.

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And I could have — I talked to him anyway, Mr. Norman.

Q. I didn't ask you —

A. (Continuing) Trying to find out whether he had been sent by anybody or not.

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BY MR. NORMAN:

Q. Oh, I am not talking about way back there. I will ask you if you haven't told him that in the last three weeks?

A. I don't recall it.



*Testimony of Robert D. Vick*

Q. Will you deny that you have?

A. Yes.

Q. Sir?

A. Yes.

Q. You deny that you have told Mr. —

A. I believe I can, yes.

In the last three weeks now you are saying?

Q. All right. When did you tell Mr. Childress that, you think?

A. I don't know. But I could have — when he originally appeared on the scene I could have told him anything, Mr. Norman.

Q. You mean you would have told your friend any kind of lie, Mr. —

A. To try to find out whether somebody had sent him down here to talk to me, yes, sir.

Q. What would have occurred to you to tell him that you had a letter in your possession from Mr. Kennedy to that effect? What would that get you from your friend, Mr. Childress?

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A. Well, I don't know that I told him that, but if I did it was an effort to try to find out whether he had been sent here by anybody, any of the Hoffe people or not.

Q. Well, I am going to ask you, have you ever told anybody that you had evidence with which you could put Osborn on the street, and that you were willing for a price to do that, both by affidavit and orally?

A. I don't recall this exactly as you put it, Mr. Norman, but — and Mr. Robbins in a meeting I had — I recall something similar to this — in a meeting I had with Mr. Robbins and Mr. Nolan over here at the Holiday Inn in Nashville, Tennessee.

Q. Why were you telling them that?

*Testimony of Robert D. Vick*

A. In an effort to try to find out if they were trying to get to me and who had authorized them to try to.

Q. I will ask you —

A. Now, I may have made that statement and any others to try to find out that.

Q. In other words, lying doesn't mean a thing to you?

A. If I am trying to find out information from people who are trying to get to me, no.

Q. To get to you or an investigation about a man and woman about a divorce or anything?

A. To change my story. No, I didn't say anything like that.

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Q. Now, Mr. Vick, I will ask you if you have ever stated to any — strike that.

Have you ever told anyone that you could subpoena an FBI agent, a member of the Federal Bureau of Investigation, and prove by him that you made both oral and written reports to them of your activities which would prove positively that Tommy Osborn was entrapped by you? Have you ever made that statement?

A. Now, again, Mr. Norman, I recall something in a meeting with this same Mr. Robbins and Mr. Nolan, said to this effect. And I could very well have said this in an effort —

Q. Have you said it to anybody else except in that meeting?

A. I don't think I have.

Q. Do you deny you have?

A. No, I wouldn't make a blanket denial of what I have said.

Q. Who else did you make that statement to?

A. I don't recall that I ever made that statement to them. Something similar was said.

*Testimony of Robert D. Vick*

Q. Well, what did you say?

A. Or to anyone else.

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Q. Well, what did you say about that, if you say it was something similar?

A. I may have said something similar —

Q. Not what you may have, what did you say?

A. I don't recall my exact words, Mr. Norman, but I felt assured that these gentlemen were acting on behalf of somebody in an effort to get me to change my testimony, and I was trying to find out who had authorized them. Mr. Robbins said he had been authorized.

And I was trying to find out who had authorized him to approach me to change my testimony. And I could very well have told these gentlemen this, as you say it.

Q. You think that you might have told them, or somebody else, that you could subpoena a Federal Bureau of Investigation agent and prove that you had turned in oral and written reports to them that would show just like we are claiming, that you entrapped Tommy Osborn?

A. I don't recall the statement, but I may have — they were talking to me about entrapment, and this, that and the other, and I could very well have made a similar statement.

Q. On the contrary, I am going to ask you if you didn't tell them that you had been to your lawyer —

A. That what?

Q. That you had been to your lawyer, and told him all

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about these reports you had made to the Bureau of Investigation, and that the agreement you had with them, and consulted him as to whether or not it amounted to entrapment or not?

Didn't you tell them that?

*Testimony of Robert D. Vick*

A. I don't recall it, but again —

Q. You would have told them that, too, right?

A. Sir?

Q. You would have told them that, too, right?

A. In an effort to find out who had authorized Mr. Robbins to approach me, yes, sir.

Q. In other words —

THE COURT: Mr. Norman, if these questions now are for impeachment purposes, maybe you had better be a little more specific in laying your foundation. Otherwise we will be getting in trouble here now.

MR. NORMAN: If Your Honor please, what I was going — I was asking him about it generally. I will do it now. I am asking Your Honor to let me bring in the same type of tape recording, use the same paraphernalia we have here, furnishing the jury with a complete — bring in the man who made it, bring in a complete recording of it, and  
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then as we go through it, let him identify his voice, and the whole thing.

Now, I predict that that will take about two days, it is that long.

THE COURT: I don't know what you have in mind, but lay your predicate now, if it is for impeachment purposes that you make these inquiries at this time. I think that is important.

MR. NORMAN: Well, I thought first, if Your Honor please, I had a right to ask him if he had done that.

THE COURT: Well, he has answered in such a way that question, and other similar questions, as to leave doubt as to whether or not he has made those statements. And I think you should pinpoint them now. I am just thinking about our regular procedure, and an orderly procedure; so that when the time comes to impeach him we will all know



*Testimony of Robert D. Vick*

— we will know exactly what this you are impeaching on or attempting to impeach him on.

BY MR. NORMAN:

Q. All right. I will ask you if you didn't make each and  
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every one of those statements at least on one occasion, on Tuesday, May 5, in Room 324, Holiday Inn, in Nashville, Tennessee?

A. I could very well have, Mr. Norman. I do not deny it.

Q. Will you say whether you did or whether you didn't?

A. Well, I —

MR. NEAL: Do you have the date on that? I didn't know whether you said '63 or '64.

MR. NORMAN: May 5, 1964, in Room 324, Holiday Inn, Nashville, Tennessee.

A. Well, I would say this, Mr. Norman: that at that approximate date I met in the Holiday Inn with Mr. Robbins and Mr. Nolan.

BY MR. NORMAN:

Q. And you don't remember what you said, is that what you are saying?

A. And we were there a matter of one or two hours, maybe longer, and I could have — this was an effort by me to find out — they said they had been authorized to talk to me and try to get me to change my testimony, and this was an effort made to try to find out who had authorized it. And I could have very well made that and other statements.

Q. I am going to ask you on the contrary, if you and your friend, an agent, you and an agent, Mr. Childress,  
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didn't set up every one of these meetings?

A. No, sir, I didn't do it.

*Testimony of Robert D. Vick*

Q. Did Mr. Childress do it at your direction?

Do you deny that?

A. No, sir.

Q. You don't deny it that he did it at your direction?

A. No, sir.

Q. And you have stated he was acting for you.

MR. NORMAN: Now, if the Court please, we were prepared to bring in the tape if His Honor thinks I should change from the course I have been following and get to it at this time.

THE COURT: You have inquired about conversations in Room 324 on a date in January, this year?

MR. NORMAN: No, it was May 5, Your Honor.

THE COURT: May 5, this year.

MR. NORMAN: Yes, sir.

THE COURT: And statements allegedly made to one Nolan, and — who was the other party?

THE WITNESS: Robbins. Excuse me.

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THE COURT: Well, I would think that would be foundation enough, if you are inquiring of the Court.

MR. NORMAN: May it please the Court, I have the transcript, and I propose now, before the tape, to read these statements and answers and ask him statements and answers, and ask whether he made it verbatim from the transcript; and then go to the tape.

Or, if Your Honor thinks better, I will go to the tape directly.

THE COURT: Well, depending on what his answers are, then we will decide whether it is necessary to go to the tape. He may admit this conversation you have there to be an accurate statement of it. If that is so, then we don't need to resort to impeaching testimony.

Is that the course you are proposing now to follow?

*Testimony of Robert D. Vick*

**MR. NORMAN:** Yes, sir.

**THE COURT:** All right.

**MR. NORMAN:** I am trying to shorten the time necessary to do this.

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**BY MR. NORMAN:**

**Q.** Do you know a Mr. Don Vestal?

**A.** Not real well.

**Q.** Has he delivered you any money?

**A.** No, sir.

**Q.** Your family?

**A.** No, sir.

**Q.** Have you told anybody he did?

**A.** I think I recall saying something about Mr. Vestal in this meeting that you are talking about, Mr. Norman. There again —

**Q.** Well, why would you have told them to try to catch somebody, that Don Vestal had been paying you money by direction of the Attorney General's office?

**A.** Well, you know that Mr. Vestal and the Hoffa people are at odds, Mr. Norman.

**Q.** What has that go to do with it? Vestal paying you money?

**A.** Well, I don't know Don Vestal, but —

**Q.** Well, why —

**A.** Again, I told them this — if I told them anything about Don Vestal or anything else, it was in the same effort to try to find out —

**Q.** Anything you told against yourself is in an effort

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to trap them, is that right?

**A.** It was an effort to find out who had authorized Mr. Robbins to talk to me and try to change my story.

*Testimony of Robert D. Vick*

Q. Why did you tell them that Don Vestal, who was — you understood these were Teamster people you were talking to, you and your friend Childress were talking to Teamster people, Hoffa people?

A. Yes, sir.

Q. Why would you be telling them that Vestal paid you any money?

A. Well, I don't think I told them Vestal paid me any money.

Q. What did you tell them?

A. I probably told them I knew Don Vestal, but I didn't tell them Don Vestal paid me any money.

Q. You didn't make any statement like that at all?

A. I might have said something about Don Vestal, but I never said he paid me any money.

Q. Did you say anything about Don Vestal delivering money to your family?

A. No, sir. We talked about politics and a lot of things.

Q. I am not talking about that. I am talking about Vestal paying you money.

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A. I didn't say he had given me any money, no, sir.

Q. Or your family?

A. No, sir.

Q. Or paid any bills?

A. No, sir.

Q. I will ask you if you didn't make this statement down there at that time, to those people, including your friend Childress:

"Vick: I don't know, they must have took off or something. And of course Sheridan miscalculated. He underestimated Tommy. By the time he woke up and saw Tommy in the court room and out, it was too late for the Test Fleet case. Now if you are going to come back, there is one ob-



*Testimony of Robert D. Vick*

stacle you have got to overcome. You have got to do one thing. You have got to nail Tommy Osborn to the cross. You have got to remove him from the scene, or else you are ——” and you used a nasty word again.

Did you make that statement?

A. I may very well have. I don't recall it, Mr. Norman. But again I say to you, that if you did, it was in an effort to gain the confidence of these people and try to find out who had authorized them.

Q. How in the world would making that statement to them ——

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A. I don't know ——

Q. You understood they were friends of Tommy?

A. I don't know what the entire conversation was.

Q. You understood that you were talking to, I thought you said, the Teamster Union?

A. Yes, sir.

Q. And you thought they were there to make you a proposition for Osborn, didn't you?

A. And I would have told them anything, Mr. Norman, to try to find out who authorized Mr. Robbins to act.

THE COURT: Mr. Norman's question is: Did you make the statement attributed to you from this transcript he is reading to you at this time? Did you make that?

THE WITNESS: I am not sure I did. I don't recall it. I could have made it.

THE COURT: All right. Go on to something else.  
BY MR. NORMAN:

Q. Did you tell him, “You have got to remove him from the scene or else you are . . .” and you used a nasty word again?

A. I don't recall it.

*Testimony of Robert D. Vick*

Q. I will ask you, did you go on, "The same way you  
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was. See, there is no alternative." Did you make that statement?

A. I don't recall it.

Q. Will you deny you made it?

A. No, sir.

Q. Did you say this: — speaking of Sheridan —

"He looked and he looked, and he looked for another alternate, another avenue of approach, see. There is none. Tommy Osborn's sitting in the way and he's so well known throughout Middle Tennessee, through doctors and through banking interests, though, through professional people, there is just nothing you can do with it, so you've only got one choice. If you've got to get from here to that wall, you've got to go through that television. You've got to knock that television down, and this, this is simple."

Did you make that statement?

A. I could very well have made it, Mr. Norman. Again, I don't recall this entire statement.

Now, again I say to you, sir, that I would have said it if I thought it would have helped me find out who had authorized Mr. Robbins to act, and I could very well have made it.

Q. How would a statement like that have helped you when you were talking to his friends?

A. Because you have — you know, Mr. Norman, that

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when you're trying to find out something, you have to have the confidence of the people you are talking to. And I would have very well told them this, could have very well told them this. I do not deny it.

Q. Did you say, "That's right. That's why if you're going to win you have got to get rid of the obstacle."

*Testimony of Robert D. Vick*

Did you say that?

A. I don't recall it.

Q. Do you deny you said it?

A. No, sir, I don't.

Q. Do you believe that, that if you have go to win you have got to get rid of the obstacle?

A. No, sir.

Q. You don't know why you made that statement if you made it?

A. No, sir, other than the reasons that I have given you.

Q. Did you say — I will ask you if you wasn't answered, after you made that last statement, "So actually the Government just brought this whole thing into this particular area as what they figured would be the best way to get Hoffa."

And if you didn't answer "Yes. Well, originally they thought they had a good case in the Test Fleet case, see, and they thought they, here in Middle Tennessee, they had a good case, and with a man that was not anti, and not pro, they felt they had a 50/50 chance, especially with the

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Tennessean on their side.

Did you make that statement?

A. Well, now, again, Mr. Norman, we had some two-hour conversations in which I was trying to find out who had authorized this man and I could very well have made that statement.

A. I don't know. When you are in a position of trying to find out information, Mr. Norman, I would have told them anything to gain their confidence to try to find out who authorized them to come to me with any proposition.

Q. Well, I will ask you if, in that same conversation, you didn't make this statement:

*Testimony of Robert D. Vick*

"The government didn't reckon with, first of all they didn't believe that Tommy Osborn would take the case. Tommy Osborn is a segregationist. He is not a liberal. He is a state man. He's always voting for conservative and ultra-conservative candidates for public office, and they didn't think that he would take the case."

Did you make that statement?

A. Again, my same answer, Mr. Norman. I could very well have, I don't recall it. But if I did, all this was a pre-  
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tense, and it was —

Q. Do you live and deal in pretense continuously?

A. I did on two occasions, Mr. Norman.

Well, that's just the two we have been able to find out about.

A. Well, I don't recall any others offhand.

Q. All right, sir.

I will ask you if you went on and said this:

"Well, there was only one man left, and that was Tommy Osborn, what could really do a first call job, and they didn't think he would because is so conservative, see. He has always been an anti. They didn't reckon with Tommy Osborn. Now when they lost the Test Fleet case, when the Test Fleet case ended in a hung jury, why, then they began to realize the mistake they had made, see, and they began to backtrack and they tried to take Tommy out of the picture, see, which they did do."

Did you make that statement?

A. I don't recall it, but if I did —

Q. Do you deny you made it?

A. No, sir, but if I did it was a lie and told for the same purpose that I have previously said to you, Mr. Norman.

Q. Now, I will ask you when you made that statement if you didn't say, "Well, you've got an admiration for Tom-



*Testimony of Robert D. Vick*

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my," and if you didn't say, "Yes, yes, I have got a lot of personal admiration for Walter Sheridan. I have got a lot of personal admiration for both men."

Did you make that statement?

A. I very well could have, because I do have for both of them.

Q. Did you make that statement?

A. I may have. I don't recall it exactly that way.

Q. You say you have got a lot of admiration for Tommy?

A. Both men, I say. As a lawyer.

Q. What was that?

A. As a lawyer, I have got a lot of admiration for him.

Q. Is Mr. Sheridan a lawyer?

A. I don't know. I don't think so.

Q. I will ask you if you continued and made that statement, "You can't change the facts. The facts are that Tommy Osborn is a hell of a capable person and so is Walter Sheridan, and regardless of anything else they are still capable. As I told you, Jim, I can't afford any personal opinions in this matter for Tommy or Walter, either one."

Did you make that statement?

A. I may have, Mr. Norman.

Q. Did you make it?

A. If I did, I don't recall it specifically as you said it.

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Q. I am reading it. I am not saying it.

A. I was there and I could very well have said it, but if I did, that whole meeting, all these statements were made

Q. Everything was made for you to trap somebody?

A. For one reason: to try to find out who had authorized Mr. Robbins to approach me.

*Testimony of Robert D. Vick*

Q. Well, I will ask you if Mr. Robbins didn't say this: "Let me put it on this basis, because it's no use of kicking words around at this stage of the game. It is our impression — or let me rephrase it. It is my impression that you have got something that will, first of all, put Osborn on the street free and clear. It might possibly help Jim along the route."

Did Mr. Robbins say that to you?

A. He may have.

Q. Did he?

A. I don't recall it exactly.

Q. Is there anything of this you can recall?

A. Not verbatim as you are reading it.

Mr. Norman, I will readily tell you, sir, that the essentials of the things you are saying are true. Now, I don't recall them verbatim.

Q. All right. And if you didn't answer, "Well, if entrapment —

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ment — there is no doubt in anybody's mind in this room, but it will."

Mr. Robbins said, "Entrapment, I think, will do it."

And if you didn't answer, "Will put both of them on the street."

Did you tell them that?

A. Again I don't recall it exactly as you said it.

Q. Do you deny it?

A. No, sir.

Q. And if you didn't continue, "You can't put one in the street without putting the other in the street." Did you make that statement?

A. I very well may have.

Q. And if you didn't say, "There just no way, if you can successfully prove entrapment of Tommy Osborn, you're automatically turning Jimmy Hoffa out."

Did you tell them that?

*Testimony of Robert D. Vick*

A. I may have, because I had that opinion.

Q. Do you remember — how is that?

A. I was of that opinion.

Q. You mean that if —

A. And this —

Q. If Tommy Osborn was entrapped, that that has something to do with Hoffa?

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A. There was there. They had asked me originally in my first meeting with entrapment, and that was practically all they talked about.

Q. The first meeting? In the Holiday Inn?

A. No, sir, in Indianapolis. This was the last meeting I believe, Mr. Norman.

Q. You are the one talking about entrapment here, not them?

A. I may have, but they originally started talking about it.

Q. Oh, they started it? Well, if you didn't say, "There's just no way to separate the two, you can't separate the two, you can't separate a doctor and a patient or a lawyer and his client," did you say that?

A. I may very well have.

Q. Did you?

A. I may have.

Q. You wouldn't admit or deny it?

A. I won't deny it, because I can't quote it exactly as you are reading it off that paper.

Q. All right. I will ask you if you weren't asked this question: "Well, can you prove this, Vick?"

And if you didn't answer, "Well, if I sit here and I can say to you, 'Robbie —' You are calling him Robbie —

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*Testimony of Robert D. Vick*

Q. "I get the idea from Harry maybe that you're interested in some information, but now in order to prove entrapment you know what I have go to do."

All right. Did you make that statement?

A. Again, Mr. Norman, I don't recall it exactly as you put it, but I was at that meeting and trying to do everything I could to find out who had authorized Mr. Robbins, and —

Q. That's your answer to all of them?

A. — and I would have made that statement or any others that I thought would have revealed —

Q. If they had said the moon is made out of green cheese, you would have answered that that is the reason you had said it, is that right?

A. If I could have found out who had authorized Mr. Robbins.

Q. I will ask you if you didn't continue and say this: "That's right, the affidavit's not going to help you much without personal testimony, without corroborating testimony. Affidavits do good but there's not any lawyer, ten-cent lawyer, will tell you that it's 100 percent better if you have corroborating testimony. Now I think, and this is my opinion, and there's no way on this God's green earth for me to prove it except to sit down to a lawyer and say this

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is what we did. Now does that constitute entrapment? And I have already done that. Yes, I did, with my lawyer."

Now, did you make that statement?

A. Again, Mr. Norman, I don't recall it verbatim.

Q. Well, have you discussed it with your lawyer?

A. No, sir, I haven't.

Q. Who is your lawyer?

A. I don't have a lawyer, Mr. Norman.

Q. Well, that was a lie, then, if you stated it?



*Testimony of Robert D. Vick*

A. Yes, it was. All this whole thing was a lie that you are talking about. I readily admit it.

Q. Well, let's go a little further.

Did you continue, "Now, of course, here's a lot of side helpful subjects at this point which I have some knowledge which they don't, is the main stream of thought, but in addition to this mainstream of thought helpful to you are some side issues which I know which have bearings maybe not this case but maybe the case in Chattanooga. Maybe ----- Now, that is the only way I know to do it."

Did you make that statement? Or do you just don't remember whether you did or not?

A. I don't recall this statement verbatim, Mr. Norman, but I will agree with you, sir, that I could very well have

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made it.

Q. Well, can you explain why it is you can't remember anything that was said there?

A. You are reading them off verbatim, and I said and admitted to you, sir, that I would have said anything to convince them and try to find out who had authorized Mr. Robbins.

Mr. Robbins said he had been authorized by some Hoffa people.

Q. Now, you have repeated that to us about 30 times, but I will keep on listening to it each time.

Now, did you say this:

"Well, I didn't mean to imply I don't like or didn't trust the men you mentioned, but it wasn't the time then, this, was jump up and run down to Chattanooga and talk to Jack Shiffle, that was out of the question, but I don't

*Testimony of Robert D. Vick*

think that naturally it would be beyond what I consider at this point."

Did you make that statement?

A. I don't recall it, Mr. Norman.

Q. What did you mean, if you — do you deny you made that statement?

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A. No, sir.

Q. Well, what would you mean about Tommy wanted me at one time to go down to Chattanooga? Did you mean that Mr. Osborn wanted you to go to Chattanooga?

A. No, I have never talked to Mr. Osborn about this matter.

Q. What were you talking about —

A. I understand from Mr. —

Q. — that Tommy wanted you to go down to Chattanooga?

A. I understood from Mr. Childress that Tommy wanted me to go down to Chattanooga. But I never talked to Mr. Osborn about it.

Q. Mr. Osborn never talked to you about Chattanooga in his life, did he?

A. No, sir. He never talked to me since last November, about anything.

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THE COURT: Mr. Norman, the witness seems to say with respect to these specific questions that he does not recall verbatim, and he has said a time or two that he is certain that it is true in all essentials. He put it that way specifically at one time.

My suggestion is — and I don't want to curb you in any way, you understand —

MR. NORMAN: I understand.

*Testimony of Robert D. Vick*

**THE COURT:** I want you to have latitude here.  
But if you would read the whole thing to him in its entirety, and if that is his answer, wouldn't that help us to get along a little bit?

**MR. NORMAN:** I would be glad to.

**THE COURT:** This is a transcription which was taken down at the Holiday Inn, In Room 324?

**MR. NORMAN:** Yes, sir.

**THE COURT:** I think I have quoted you correctly, haven't I?

**THE WITNESS:** Yes, you have.

**THE COURT:** Read the whole thing to him and see if that is his answer generally to that whole thing, and then we can make a little headway, I believe.

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**MR. NORMAN:** All right.

**THE COURT:** That is just a suggestion.

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**MR. NORMAN:** That's all right; I will be glad to do it that way.

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**BY MR. NORMAN:**

**Q.** Well, starting verbatim:

**"Robbins:** You would, you would talk to Schiffer then.

**Vick:** Or somebody else, if you think——

**Harry:** How far up is Schiffer really in the, in all the ways, as far as legal talent goes?

**Jim:** Oh, I'd say he was about next to Haggerty.

**Robbins:** That's a difficult question to answer because a —— they've got Buffalino, they've got Schiffer.

**Jim:** Danny Mayer.

**Robbins:** Outside of ——

*Testimony of Robert D. Vick*

Vick: They've got three sharp people.

Harry: How about Mayer?

Vick: Legally they got three sharp people. They got Jim Haggerty, they got Mayer, they got Sillets.

Robbins: Who?

Vick: Sillets.

Jim: Harvey Sillets.

Vick: Harvey Sillets. You go beyond that you're out of the —

Robbins: He's in Chicago now.

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Vick: Yeh. He's the former District Attorney of Cook County.

Jim: How about this Ragino? Or whatever his name is?

Vick: I don't know the man. Most of them beyond that are fixers.

Harry: Well, actually, all you really need anyway is for a man to say that what you got can get the job done.

Vick: Well, what I was hoping you would do, story I related to you is this, Robby, up yonder, that as far back as May prior to about, for all practical purposes from that point on I was a Government Agent.

Robbins: Right.

Vick: Now, does this constitute entrapment?

Robbins: In the opinion of a — (

Vick: Did you get a legal opinion on this?

Robbins: Yes, in our opinion it constitutes entrapment. This is a violation of a —

Vick: Okay.

Robbins: — of a — Constitutional rights.

Vick: Now.

Robbins: Between counsel and client.



*Testimony of Robert D. Vick*

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Vick: I can subpoena an FBI agent into court, and put him under oath, and he will have to testify that he took a written report in writing and that there were oral and written reports from that time through the time that this this was made public. Now, does that constitute entrapment? If it does, we can prove entrapment. If it doesn't, we can't. It's as simple as that.

Robbins: On that basis then I don't think there's any question then but what you can prove entrapment.

Vick: I don't think there is either.

Robbins: I don't think that there's any question that entrapment can be proven.

Vick: All right, that—— that—— I was hoping and I assure you did a legal opinion as—— if that—— then—— though I wasn't paid by the Government—— but this is not—— pay doesn't necessarily mean a man is or isn't a Government agent, does a——

Robbins: Well, there's other forms of compensation.

Vick: Yeh. From May to November and up through

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November and 'til this morning, I'm considered a Government agent, then that's entrapment. If I wasn't, why——

Happy: If you wasn't somethin you couldn't be sitting on your . . . drawing money from the Policemen department without working.

Vick: Well, I say if——

Jim: There's more than one way of furnishing compensation.

Vick: Let's say this, that I'm the only man in the history of the Police Department that's ever does that——

Harry: That they ever had——

Vick: Don't know whether that constitutes any——

*Testimony of Robert D. Vick*

Robbins: Well, this is compensation. There's other forms of compensation other than just direct payment.

Vick: Well, there's other forms that I can tell you about, but I won't.

Robbins: Sure. Sure. Well, a——

Jim: Well, this still gets us back to the g.d. primary problem.

Harry: Yeh.

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Jim: If what the hell it's gonna take to show somethin about this.

Vick: Well, there's only one — there's only two things — gonna pinpoint it, that you can do a good round job of this thing. And this is just what Robbie said, one of two things or both. Now, if you give 'em one of two things you might as well give 'em both. Say what's the difference?

Robbins: That's right.

Harry: He's talkin about what it will take to——

Jim: If you give the affidavit, you gotta be a witness?

Vick: Well, you don't gotta be, but what the hell's the difference, Jim?

Robbins: No, but what the hell, they can — sure be — anyway —

Vick: You gonna have to wrap the crown on your head, one way or the other.

Jim: Right.

Robbins: Let's say that he signs an affidavit to certain facts. Then he says, "Oh, wait a minute. I'm not gonna

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testify." So they subpoena him. The first thing they do when they put him on the chair, there it is, "Did you sign this?" Either he's got to say yes, or he's got to say no.

*Testimony of Robert D. Vick*

If he says yes there's no quarrel. If he says no, he just perjured himself.

Vick: That's right.

Robbins: See. Or —

Harry: Or, you can even say —

Robbins: You can always — out, too, but that's a — to me —

Vick: There's only one way that you could do a good, round, first-class job on this, and that's with affidavits and testimony.

Robbins: And testifying. And this is what you're saying you're willing to do?

Vick: Yes.

Jim: The other thing is, how do we bring this about?

Robbins: Well, I think that he's already told us that we've got to bring an attorney in, somebody in the —

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Vick: You don't have to bring an attorney in. All you have to do is answer this question or get it satisfactory yourself. I'm satisfied. You get this question satisfied. Operating from May to November as a government agent, did this — First of all, if he write — reports to the FBI and to others, government employment justified, from May to November, does this then constitute Mr. Jones as being a government agent? Okay. If the answer is yes, yes it does constitute Mr. Joes as being a government agent, then, too, does — does what Mr. Jones' activities from May to November constitute entrapment?

Jim: If he's been advised and instructed, yes.

Vick: Okay.

Robbins: That is likely what happened.

Vick: Yeh. And if, rehearsals, and all this sort of thing —

Robbins: All right, that still leaves this —

*Testimony of Robert D. Vick*

**Vick:** Are you satisfied with that question in your mind? I'm satisfied in mine.

**Robbins:** I'm satisfied, because I've already posed this question —

**Vick:** Well, now, this is why I —

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**Robbins:** (Unintelligible.)

**Vick:** If you posed it pretty well as I stated it here —

**Robbins:** Yes, with the exception of the reports. I didn't know about the reports, see.

**Vick:** Well, there are written reports, see, dated as far back as May.

**Robbins:** I knew the May and the November — (unintelligible, phone being dialed) — as an FBI agent.

**Jim:** Is that '62 or '61?

**Vick:** This is in '62, it's not '63, it's —

**Jim:** Not '63.

**Vick:** Just before the trial.

**Jim:** Oh.

**Harry:** Get there right away. Well, I don't know (answering phone.)

**Vick:** Now, you're satisfied this does constitute entrapment?

**Robbins:** Yes.

**Vick:** You've already got a legal opinion on that. I ask you if you've got —

**Robbins:** Yes. I've checked with the legal eagles. I've checked it with the legal eagles.

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**Vick:** All right, now, then you have only one problem left.



*Testimony of Robert D. Vick*

Q. What do you mean, rubbing your hands, when I said, "You have only one problem left?"

A. I don't know, Mr. Norman. My hands were itching.

Q. All right.

Robbins: One problem.

Vick: If you're satisfied, I am. I know there's no question in my mind because this is one thing that I can tell you that will fortify the whole position.

Robbins: Well, I assume that'll come, but —

Vick: Yeh. But — rehearsals and things, I guess.

Robbins: Right, and that's how this is going to be delivered, and now we're gonna deliver.

Vick: Well, I've told you how it'll be delivered. If I do it all, it's got to be a first class job. It's got to be with affidavits and testimony. No other way to do it. For me to sit here and tell you that there is another way or for

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you to try and convince me that there is another way is foolish.

Robbins: All I know is the two ways that —

Vick: Cause you know that I know that so let's don't waste time, Rob, you trying to convince me or me trying to convince you. Cause there is no other way. Now, I got the idea from Harry that a — from what he talked about after we come from Indianapolis and so forth that you might be interested in some information while I would not be exposed, see. Well, this might be — in my opinion this might be possible but it sure as hell isn't probable. Now, I'm not really interested in that cause I'm not the gainer in that, I've all the risk and not the gain, I risk everything to lose and nothing to gain. That's the only reason I'm asking that if there's only one proposition that's to go for broke, either put the man in the streets or you don't, and anything in between is

*Testimony of Robert D. Vick*

just wasting your money, my time, my risk — and I'm just running too great a risk to ever be able to justify that kind of money. I also make you under — I'm not

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— here come the point of the evening. I could sit 'til in the morning and give you a lot of helpful tips and a lot of helpful information.

Robbins: Naw, that —

Vick: Or sell you a lot of helpful information, but the risks are too great in the first place, it'd have — the only four people, actually there are only two for a long time, me and Walter Sheridan, and then there were four, and so far as I know there are only four to this day, that have all this whole thing, all this whole story. If it's been revealed to anyone else, they have done it. I don't think the government lawyers know anything, I'll be frank with you, I really don't. I'm talking about old man Hooker and Jim Neal, because I know that there have been occasions when people have said I'm not, don't want to release that to the lawyers yet, I want to keep that for awhile, think about it. So, the lawyers were, meaning the two prosecuting attorneys, Jim Neal, so I don't really think that a —

Jim: Is Sheridan a lawyer himself?

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Vick: That guy can represent me any time he wants to represent me. He can represent me in any court.

Robbins: Well, a — let me ask you this question. I have to assume he went to law school —

Vick: Yeh, he's a FBI agent, a former FBI agent.

Jim: Yeh, they gotta go to law school.

Vick: He went to law school but he's not a lawyer.

Robbins: I have to assume, but I have to ask you any-

*Testimony of Robert D. Vick*

way. I assume that you want some good faith prior to —

Vick: Not necessarily.

Robbins: Not necessarily.

Vick: No. Not necessarily. That's the reason I chose this route, so I wouldn't have to ask you a thing. And you don't have to have it. First place, you don't have to be unnecessarily suspicious of me because the Justice Department is not interested in putting Jim Nolan and Loren Robbins in the penitentiary. You violate a law, P. 471

they'll put you in the penitentiary, but there's no, as I said in the beginning, personal animosity between you and you and the Attorney General, or anyone else, as far as I know, they don't even know you and probably you don't even know them. Other than you may know each other by reputation, see. If there hadn't been this personal conflict that has taken place between the Attorney General and the president of the Teamsters Union or between some people and Tommy Osborn then this is the only sensible route to travel, so you don't have to have good faith or evidences of good faith. Now, when you get ready to — if we ever reach an agreement — a — then the time and place to deal is then. There doesn't have to be whole series, evidences of good faith.

Robbins: Well, I can tell you this much right now. Now, I don't know what the hell, what you've got right now from the government, but I'm in a position to tell you that whatever you got, you'll still profit.

Vick: Well, I've got to.

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Robbins: You'll still profit. I can tell you that much.

Vick: Here's some things that you've got to consider.

*Testimony of Robert D. Vick*

Now, then, in talking about the only — will we have — if we agree on this entrapment bit, and you said you did, and I of course know, we only then have one problem and that's agreeing to agree. You have got to realize, everyone else, of course, realizes, and I'm sure you do, that the wrath of the crown will then fall on my head.

Robbins: That's right.

Vick: And, I've got to be prepared to handle that situation as I think it best to handle it, and I've got a — it's got to be worth it — because I don't have to — I can walk out of this room and never see you three again and have a little more than a lock on a pretty damn good deal, and I got no reason to —  
And you used a nasty, filthy word —  
— because if I did, I wouldn't be here.

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Robbins: I think I'm here to say that makes sense and of course I'm going for an intangible so to speak. I don't know exactly what the intangible is, but again for the period of this whole situation all I can say to you, all that can happen, is that you'll profit.

Vick: Well, it is, the thing — the figure that you all talked about in Indianapolis I've already got from that —

Robbins: Well, I sort of had a sneaking suspicion that that would be true. This doesn't come as a complete surprise to us.

Vick: Well, I've already got it. There wouldn't be any point; fact my visit here tonight is to tell you.

Robbins: This still doesn't surprise me.

Vick: If I don't have it exactly, I have it so close that — it's immaterial. When you start talking about a thing like this, as Walt says, this is a big league and it's



*Testimony of Robert D. Vick*

a tough league and you're playing it, you got to play, and if you don't you got to get out, one of the two.

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Jim: If you can't stand the heat, get out of the kitchen.

Robbins: Well, this —

Vick: That's right.

Robbins: This doesn't — this doesn't surprise me.

Vick: Well —

Robbins. Doesn't surprise me at all. I don't think it'll surprise somebody else.

Vick: I don't think it will. So — a — we've got to — we've got to get away from that, and, a — I'm sure you realize that and I'm sure they do. Now, if you want to — if you're authorized to talk about something beyond that, why —

Robbins: I'm authorized to say to you that whatever you got, you'll profit.

Vick: Well, a dollar is a profit, right?

Robbins. No, I'm not talking — No, I'm not — don't misunderstand me. I'm not gonna —

Jim: Here.

Vick: No, I know that.

Robbins: 'Cause I know that when I ask you —

Vick: Let me show you the figures.

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Robbins: When I ask you, why —

Vick: You got a piece of paper?

Robbins: This is what I've been using.

Vick: I'll use this just to get a brief rundown. This is what I lose —

Robbins: All right, that's a good start.

Vick: All right. First place, let me ask you this: I get a pension from the government. This is small item com-

*Testimony of Robert D. Vick*

pared to this big one, but—a World Service pension. Now, I ain't gotten it since 19— since I got out of service in various amounts. How long do you think I would keep it if I do what you're suggesting? Well, maybe 30 days.

Robbins: Now, it would take a little longer than 30 days. It wouldn't take much over ninety.

Vick: Well, well. Ninety at the outside.

Robbins: Okay.

Vick: Now, if I live 20 more years, it's worth \$5,000 to me at the minimum. You know when I'm sixty it goes up about what it is, and if I die it goes up I don't know how many times, my wife, as well as my children under 18, and all of that.

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And you used a nasty four-letter word here. Do you use filthy language like that usually?

A. Not ordinarily, Mr. Norman.

Q. You were just doing it because you were trying to entrap them?

A. Trying to find out who sent them.

Q. Continuing:

How much would you say a college education for three boys worth? Would you say a minimum of \$36,000, \$12,000 apiece?

Jim: Yeh.

Vick: It's a minimum. It's an absolute minimum, ain't it, Jim?

Jim: Have to be.

Vick: In the first place the college that they're planning to attend, and I've one almost eighteen, and one fifteen—

How old are your children?

A. One is 17, and one is 14 or 15.

*Testimony of Robert D. Vick*

**Q. Continuing:**

—so they've got some idea about what they're gonna do. They can't live at home, they're gonna have to live on the campus. So this is then a minimum of \$36,000. Do

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either one of you have any children in college?

**Robbins:** Oh, no.

**Jim:** Not yet. Not yet.

**Vick:** This is a minimum. This isn't a — this is what I'm losing.

**Robbins:** 'Cause of what you've got a lock on?

**VICK:** That's right. This is what I got a lock on. And a — all right, now — a — I got a \$9000 a year job. This is as a probation officer.

**Robbins:** For how long, Vick?

**Vick:** Well, for a time, life.

**Robbins:** Life.

**Vick:** This is it. I don't know, what's that worth?

**Robbins:** Well, twenty years, that's \$180,000. I can give it to you real quick. Doesn't take a tremendous education to figure that out.

**Vick:** Now, this is a lock on a Federal probation probation officer's job. Fact I was called to Washington, to ask me what I wanted. You name it, within reason of course, and within my capabilities, and we'll then —

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**Robbins:** You're talking in excess of a quarter of a million dollars.

**Vick:** That's right. Now this is not considering, Robbie, what's it gonna cost me to evade prosecution after I've done it? They sure as hell gonna try to prosecute me. They gonna get me for something, somewhere.

**Harry:** What was it he told you?

*Testimony of Robert D. Vick*

Vick: Don't stomp your toe. If you do it don't stomp your toe. And he meant it.

Vick: You can't put one in the street without putting the other in the street.

Robbins: I think that's true.

Vick: There's just no way. I you can successfully prove entrapment of Tommy Osborn, you're automatically turning Jimmy Hoffa out.

Robbins: Right.

Vick: So there's just no way to separate the two. You can't separate a doctor and his patient, or a lawyer and his client.

Robbins: That's right.

Vick: Or me and my wife. We're the same. And a — so this — Now, a — That's what I meant in my

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original question, what do you want?

Robbins: Well, can you prove this, Vick? This is what I want to know.

Vick: Well, if I sit here and I can say to you, Robbie, the same thing I've always said, if the circumstances plus some others that I have already related to you constitute entrapment which is a legal question, and I can't answer it, you said you could, if this constitutes entrapment and I think it does, yes. Yes, I can.

Well, I am sorry, I am reading page 92, which I had already read.

Now, did you make those statements?

A. Sir?

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Q. Now, did you make those statements?

A. Mr. Norman, your recital here of this matter is, as I



*Testimony of Robert D. Vick*

said, and I have said previously, is essentially correct. I don't recall every one of these statements.

Q. Do you recall making most of them?

A. No, sir, not specifically, but what you are saying is essentially true.

MR. NEAL: Excuse me just a minute. Let him finish.

Q. Weren't you finished?

A. And I asked — I think I recall asking Mr. Robbins who had authorized him. And I don't think he would answer that.

But this is — what you are saying, Mr. Norman, is essentially true.

Now —

Q. You told them all these things?

A. I said these things in a conversation between four men in which I took part and it is essentially true. And I was trying to find out who had authorized Mr. Robbins in the first place.

• • • • •

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Q. Mr. Vick, on quite a number of occasions on yesterday you explained these conversations you were having with these people down in this motel room by way of you were trying to find out who was trying to approach you, that was your purpose in doing it. Isn't that true? Is that right?

A. I believe that is substantially true, what I said.

Q. Yes. And I believe you told the jury on more than one occasion that you were in direct contact with the Department of Justice and were reporting to them. And you also heard Government counsel, Mr. Neal, make that statement here that you were in direct contact with them, reporting all these activities to them.

A. Yes, I reported to Mr. Sheridan. I think I talked —

*Testimony of Robert D. Vick*

Q. To Mr. Sheridan?

A. I think I talked to the FBI.

Q. You reported to Mr. Sheridan. You reported to Mr. Steele, too?

A. Yes, sir, I reported to Mr. Steele and may have talked to Mr. Sheets. I am not certain.

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Q. All right. Now, I want to ask you if \_\_\_\_\_ well, you did — you kept them fully advised about all you were doing, is that right, what you told them yesterday, is that right?

A. Yes, sir, they knew about the visits there.

Q. Now, before this visit that I asked you about yesterday in detail here in Nashville, I will ask you if as early as April 9 — you told us about Childress going to Indianapolis — I am going to ask you if on April 19th you didn't go to Indianapolis and go to the home of a man by the name of Nolan and talk to him in his basement?

A. Yes, sir, I did.

Q. Now, that meeting you were asked about — that you had here, was asking you about yesterday, was May 5th.

Now, this was back in Indianapolis April 19th when you went up there, wasn't it?

A. Yes, sir. This was the first time I had ever seen these gentlemen.

Q. You talked to them about it up there, didn't you?

A. Talked to who, Mr. Norman?

Q. Mr. Nolan and Mr. Robbins?

A. Yes.

Q. April 19, 1964?

A. Yes, sir.

Q. In the basement of Mr. Nolan's home?

A. Yes, sir.

*Testimony of Robert D. Vick .*

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Q. Well, I take it that you are going to say that the reason you went up there was to try to find out who was trying to bribe you, too; is that right?

A. This was part of it, but not at this time, Mr. Norman.

Q. All right.

A. (Continuing) They had told Mr. Childress, it was my understanding, that they would give him the money if I would come up.

Q. And you had a conversation up there about changing your testimony, too, didn't you?

A. Yes, sir, they said if I could ——— they understood from somebody that I had some information that would help Jim, or something like that.

Q. I am talking about Osborn.

A. I don't know whether ———

Q. Tommy Osborn.

A. I don't know whether they mentioned Mr. Osborn or not. They may have.

Q. And you talked about this as early as April 19th? And you talked about this as early as April 19th? Didn't you go to this man's basement and talk to him?

A. Yes, sir. And there was a United States marshal with me, too, Mr. Norman.

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Q. They didn't let him in?

A. No, sir. I would have let him in but they objected. They didn't know who he was.

Q. Who did you talk to — Mr. Nolan — Robbins?

A. Yes, sir. I think there was a Mr. Green there, too, Mr. Norman.

Q. Mr. Nolan, Mr. Robbins, Mr. Green?

A. Yes, sir.

*Testimony of Robert D. Vick*

Q. And you talked to them directly and personally, did you not?

A. Yes, sir. Yes, I did.

Q. On April 19th?

A. Yes, sir.

Q. Now, and in addition to that one — and the meetings — the one I asked you about in Nashville, I ask you on April 24th if you didn't go to Louisville and meet them?

A. Yes, I did.

Q. And talk to two of them about it?

A. Yes, sir.

Q. Did you report that to the FBI?

A. Yes, sir, I did.

Q. And what happened?

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A. And also at Indianapolis.

Q. And up at Louisville you talked directly and personally at Louisville?

A. I believe that just Mr. Nolan and Mr. Robbins.

Q. Just Mr. Nolan and Mr. Robbins?

A. And Childress of course was there.

Q. Now, then, on April 19th you went to Indianapolis and in the basement talked to Nolan and Robbins, and then April 24th you went to Louisville?

A. Yes, sir.

Q. And talked there?

A. Yes, sir.

Q. I am going to ask you — and I am reading from an FBI report handed to me yesterday by Government counsel when we asked for it — I am going to ask you if you didn't report to Mr. Edward T. Steele on April 30th, which would have been eleven days after you talked to Robbins and Nolan at Indianapolis, and six days after you talked to them in Louisville — if you didn't report



*Testimony of Robert D. Vick*

to Mr. Nolan as follows: I mean — Mr. Steele as follows:

If, contrary to what you say, you didn't tell them anything about what went on up there, but you didn't say:

"Vick indicated ——" that is to Steele, who is taking this statement ———

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" ——— that he had had no direct contact with either Robbins or Nolan, and further, he had had no direct contact or communication from other members of the Teamsters Union or any other person where a direct offer had been made to Vick in an effort to prevent his testimony in the Osborn trial."

A. No, sir, I don't recall. I don't.

Q. You had had contact ———?

MR. NEAL: Wait a minute. Let him answer.

. (Continuing) I called Mr. Sheridan before I ever left Nashville for Indianapolis and told him where I was going, who was going with me, and what I was going for.

Q. I didn't ask you about Mr. Sheridan.

A. Now, I don't know about Mr. Steele — reporting to Mr. Steele, don't recall but two times I have talked to Mr. Steele.

Q. I am going to ask you if you didn't tell to Edward T. Steele, an agent of the Federal Bureau of Investigation, on April 30, 1964 — the FBI man right here in Nashville — if you didn't tell him as on the 30th of April that you had never had any direct contact with — either with Nolan or Robbins?

A. Now, what date did I go to Indianapolis, Mr. Norman?

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Refresh my memory.

Q. Well, you just told us you went on April 19th, and then you went to Louisville on April 24th.

*Testimony of Robert D. Vick*

A. Well, I don't ———

Q. And I am asking you now, as of April 30th ——— if on April 30th, two weeks after you went to Indianapolis to talk to Robbins and Nolan, and six days after you went to Louisville to talk to them, if you didn't tell Mr. Steele of the FBI you hadn't had any contact with either one of them?

A. I don't recall it no, sir.

Q. Will you deny it?

A. No, sir, because ———

Q. Well, will you admit, then, if you did tell Mr. Steele on April 30th that you had had no direct contact with them you lied to him, didn't you?

A. I only recall talking to Mr. Steele twice. Once was in this building, once at my house after the May meeting.

Q. I have read in his report you made to him on April 30th ———

A. Was that ———

Q. Did you tell Mr. Steele on April 30th that you had had no direct contact with either Robbins or Nolan?

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A. I don't recall it, no, sir, because I wouldn't have done this, Mr. Norman, because Mr. Sheridan knew I was talking to them.

Q. I am not talking about Mr. Sheridan. I am talking about Mr. Steele.

A. And I am telling you, sir, that I don't recall this statement.

Q. Will you deny you told him that?

A. No, sir.

Q. If you told him that, you misled him, didn't you?

A. If I did ———

Q. Why would you have misled Mr. Steele about it, the FBI man?

*Testimony of Robert D. Vick*

A. I don't even recall it, Mr. Norman. I don't know what you are talking there —.

MR. NEAL: May I see it.

MR. NORMAN: Yes, sir, the report you handed me from the FBI — to Mr. Steele.

A. (Continuing) Because Mr. Steele knew Mr. Childress was here. I had talked to him about my suspicions of Mr. Childress. And I had talked to the Department of Justice at Washington. There wouldn't be any reason —.

Q. I didn't ask you that. I asked you to state if you didn't tell Mr. Steele —?

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A. I don't recall it, no, sir.

Q. You just can't recall your telling him that, can you?

A. I recall two meetings with Mr. Steele.

Q. I am going to ask you about the second one, now.

A. All right.

Q. I am going to ask you if you didn't see him two days later — Mr. Steele, on May first, 1964. Do you remember that?

A. May the what, Mr. Norman?

Q. May 1, 1964, Mr. Steele, the FBI agent here in Nashville, this court house?

A. Did I come — was this meeting I came to the court house? I don't —

Q. I don't know. I am asking you.

A. Well, I came here. This could very well have been it, Mr. Norman.

Q. All right. I asked you here what you told him on April 30th. Now I am asking you if on two days later, May first, when you talked to Mr. Steele, you were here in Nashville talking to these people down here in this motel in room 324 on May 5th, were you not?

A. I believe that is correct.

*Testimony of Robert D. Vick*

Q. I ask you now ——— I am going to ask you if on ———

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four days later, before you talked to them — Robbins and Nolan were in Nashville on May 5th ——— if you didn't tell Mr. Steele that you volunteered this ——— that you intended to put the word out that you were not interested in any offer from anyone designed to prevent your testimony in the trial of Osborn.

Did you tell Mr. Steele that?

A. I did tell Mr. Childress to tell them that.

Q. No, sir, not asking that. But did you tell Mr. Steele that?

MR. NEAL: Wait a minute. Wait a minute.

Q. (Continuing) I am not asking you ———

A. Yes, sir, told Mr. Childress to tell them that, too.

Q. You told Mr. Steele that?

A. Yes, sir.

Q. Then four days later, if you told him you wanted them to come back down here, you had all this conversation with Nolan and Robbins you told us about yesterday, didn't you?

A. Yes, sir, I thought it was a further chance to find out some information.

Q. You later told Mr. Steele that you had not ———?

A. I followed it up.

Q. You lied to Mr. Steele when you told him that?

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A. Well, probably ———

Q. Not probably.

A. (Continuing) ——— Circumstances changed what I did, Mr. Norman.

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*Testimony of Robert D. Vick*

BY MR. NORMAN:

Q. Oh, I see.

Now, continuing on this meeting that you had with them on May 5, I want to ask you if this conversation didn't take place between you and them: —

It was part — before I ask you about that, it was part of your participation in this thing that you told Mr. Hooker as your duty as a citizen, you said that was part of it, did you not?

A. Yes, sir.

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Q. Well, I am going to ask you if you didn't have this conversation with them on May 5, this month, down there in the motel, if Nolan didn't say, "Have you been following that Chicago trial?"

And I am reading the transcript verbatim. And I will follow His Honor's instructions and read the whole thing.

"Vick: No.

"Jim: Not even a little of it?

"Vick: Not at all. I haven't heard a buzz.

"Robbins: This is the second week of it.

"Harry —" That's Childress, isn't it? Your friend?

A. I don't know.

Q. Well, he's your friend, Childress was the only Harry there?

A. Yes.

Q. "They say they won't have no problem.

"Vick: They ain't got a jury yet.

"Robbins: No, they got four. The government approved four, and the defense hasn't even talked to 'em yet. They had three last —

"Harry: They'll have a hell of time gettin' them, I'll tell you.

"Jim: They had three last week, and one —

*Testimony of Robert D. Vick*

"Vick: Seems rather curious, seems like to me now, course, I don't know the case, I don't know the details of it, don't know very little about it, and what I do know is either second-hand information or get it from the newspaper, but it seem to me there's a helluva lot of todo over nothin'.

"Robbins: That's what it amounts to.

"Vick: That's the way it looks like to me just on the surface.

"Robbins: This is what it amounts to."

MR. NORMAN: I am going to lay these here.

I will be through with this copy.

BY MR. NORMAN:

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Q . "This is what it amounts to.

"Vick: What little I know about it.

"Robbins: They had three jurors selected last week, and one of them was a female, they locked her —" and I ain't going to use the nasty word you used — "up overnight, from my understanding —

"Harry: Can they get a conviction?

"Vick: . . . got none?

"Robbins: Yes, I think they got enough right now on appeal that —

"Jim: Well, so far as I know, if they got it, for this reason, this judge is telling these people, says, if you accept service on this jury, you'll —

"Harry: " — your friend — "You gonna have to stay a long time —

"Jim: You'll be locked up for at least four months.

"Vick: Well, here's where they're gonna get around on this, Jim —

"Jim: Every, the only people they can get is some . . . boy that doesn't have any business.

*Testimony of Robert D. Vick*

"Robbins: This particular judge —

"Jim: No family —

"Vick: That's right. The way, they're not goin' to get reversed on that.

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"Robbins: Think so.

"Vick: No. They won't. They might get reversed on something else, but it won't be on that. You have an error they would, but not in this case because this is why: the Supreme has held, many many times, that the judge, in the first place, the man that's on trial is convicted of jury tampering. That entitles, according to the Supreme Court decision, that entitles any judge to exercise any caution that he deems necessary in his court. Now, if the damn cases are up there in the Supreme Court, that damn judge, if you have a guy, any defendant that is convicted, guilty or innocent, I'm not saying the man is guilty or innocent, I'm saying he's convicted, so that, in the eyes of the law, makes him guilty, then this judge, whenever he appears in court, from that time on, this judge can just about run that s. . o. . b. . . just exactly like he wants to. The Supreme Court has held it time after time after time. That is unless . . . I know of one in New York, just offhand now, I ain't familiar with the decision, but there is a decision —

"Harry: But you take the lower courts, can they —

"Vick: Now if Harry Childress is in that court, that judge don't have the prerogative, see, of what you talking about, or Jim Nolan and Robbie and me, we're defendants, then this is a different situation. He would

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get reversed on it, or he'd give a new trial.

"Jim: But once you have been convicted —

*Testimony of Robert D. Vick*

"Vick: That's right. That's exactly right. That judge can take any precaution that he can just come close to justifying.

"Robbins: Discretion of the court.

"Vick: Yeh. And —" and you used a nasty four-letter word — "If you got a man in there that's convicted of jury tampering," — and you used that nasty four-letter word again — "they can justify anything. Now, hell, he'd justify, hell, this damn guy down here in Chattanooga, took the damn . . . and didn't let the people select the jury, he selected them s . . . o . . . b . . . himself, and this was just man this was just a man that was charged with jury tampering. And he won't get reversed on that.

"Robbins: That was Wilson.

"Vick: Yeh.

"Harry: That's who?

"Robbins: Wilson.

"Vick: They didn't select that damn jury down there. Wilson selected it. And you know that Boyd told Tommy Long from up there in . . . why hell you was there with me, pays to listen, John, I've givin' you one day to select a damn jury. If you don't, I am Judge Boyd, now he

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meant . . . if you don't select I am.

"Jim: Yeh, is this —

"Robbins: Is this the judge in Osborn's case?

"Vick: Yeh.

"Happy: Yeh.

"Vick: And he will.

"Harry: Boyd, from Memphis, Tennessee.

"Vick: And he will. And he'll get away with it. Now wherever you have jury tampering, wherein Tommy's



*Testimony of Robert D. Vick*

case. That s . . o b . . . can sit up on that bench and do anything, and get away with it.

"Harry: And they practically do, too.

"Vick: Well, you can't in every case, now. You . . he can get him" — and you used — you referred to a part of the judge's anatomy in a nasty way — "reversed lot of times."

MR. NEAL: Pardon me a minute.

If Your Honor please, I submit this is wholly immaterial.

MR. NORMAN: It goes to his credibility, his attitude. He is saying he's doing this as a citizen and as an officer. It goes to his credibility and his whole attitude.

THE COURT: Are you objecting, Mr. —

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MR. NEAL: Yes.

THE COURT: The objection is overruled.

BY MR. NORMAN:

Q. "Vick: Well you can't in every case, now. You . . . he can get his . . . reversed lot of times. But when he's got a defendant up there that's been charged or convicted of tampering with the jury.

"Jim: Then he runs the trial.

"Vick: He runs that s . . o b . . . from beginnin' to end.

"Harry: Just like a shotgun lawyer.

"Vick: It's a kangaroo court.

"Happy: That's right, that's it exactly.

"Vick: That's right.

"Harry: I used to be a judge up there in city jail.

"Vick: In kangaroo court?

"Harry: That's right.

"Harry: Hell yes, I been a judge many times, up there.

"Vick: You ask a lawyer, Robbie, about the Supreme Court decisions on this very thing we're talking about.

*Testimony of Robert D. Vick*

Man's there's a list of them as long as from here to Dannemorra."

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That's some Irish place in Ireland, isn't it?

A. I don't know.

Q. Well, you were the one that was talking.

A. What was the name of the place?

Q. Dannemorra.

A. I don't know. I never heard of it.

Q. Did you make that statement?

A. I don't recall it.

Q. Would you recognize your voice from a year ago, if I played it back to you on a tape —

A. Im am sure I would, Mr. Normal. This was just a conversation.

Q. You were using this about the judge, to impress somebody?

A. I don't recall even mentioning His Honor's name.

Q. Well, if you deny it, I will play it on the tape and see whether you recognize your voice or not.

A. I am not denying it, Mr. Norman.

Q. All right.

"Harry: Yeh. They brought that out that day we was up there.

"Vick: That's right . . . damn judge will sit up there and he'll do just about anything and get away with it.

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And the Supreme Court won't reverse it.

"Harry: Neal brought that out. I don't know how many different things on the same thing.

"Vick: Oh man, there's a damn list that long, that, hell, he says, I don't know how many . . . the Supreme Court, right down the line. Because they figure that, that

*Testimony of Robert D. Vick*

the Supreme Court has said this, Robbie, in so many words, we're going to protect the courts at any costs. It don't make any difference if we have to pay a little bit in liberty individual liberty we're going to protect the courts see. We've got to. If we don't then we're in trouble period all over the country from the word go. In a sence makes sense. If, a, and, hell, its . . . right up there in my house in one case, this banker said that. That we're going —

"Happy: On that very thing?"

"Vick: We're going to protect the courts. If we have to sacrifice a little of individual liberty, so be it.

"Robbins: Well, that's the only place you've got to go is to the damn courts.

"Harry: Yeh, they're and they're just about the erokedest God damn things in the world.

"Vick: They are . . .

"Robbins: Still the only place you've got to go, Harry?

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"Harry: That's right. You got to have some kind of law.

"Jim: . . . give 'em justice and —

"Harry: They say that this is the best system anywhere in the world.

"Robbins: It is. It is.

"Harry: I'd hate to be in court in some of these other countries.

"Jim: Maybe with your experience with what's gone on in Davidson County, by gosh.

"Harry: What's gone on right here . . . I don't have to go anywhere else.

"Jim: . . . case they arrest you.

*Testimony of Robert D. Vick*

"Vick: Well, in Davison County Court House, that's Judge Falke and I, I'd get out of Davison County Court House.

"Harry: Yeh" — and he used a dirty word —  
"and I will too.

"Vick: But you go down to 8th and Broad and you got a different problem.

"Harry: Yeh, that man don't care —

"Jim: You mean Federal Court?

"Vick: Yeh.

"Jim.: Well, they've got to be a little bit better than

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local politics.

"Vick: Yeh. Well, he can be. Course, he don't have to stand for election and you know —

"Harry: Are they appointments?

"Vick: Yeh. Wor life.

"Robbins: They're lifetime appoints too, Harry.

"Harry: They are?

"Robbins: Don't make any difference whether that guy's competent or not.

"Vick: . . . Bash . . .

"Harry: Good gracious alive. That can he got that job, he's in there for good, ain't he?

"Vick: He's in there for life. Hell, those —

"Harry: But you know he can be took. No wonder they're so fierce. Hell, they don't give a damn one way or another.

"Vick: Yeh.

"Robbins: Is it a physical impossibility to impeach one?

"Vick: Physically impossible. Legally it's possible. But a —

"Robbins: Physically it can't be done.



*Testimony of Robert D. Vick*

“Jim: They’ve even been to a point where they’ve deteriorated mentally to a point where they couldn’t

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make a proper decision but still no one had the authority to remove ’em.

“Harry: How’d they get ’m out?”

“Vick: Well, they just die. That’s the only way.

“Harry: Well, legally ——”

You made all these statements trying to entrap somebody?

A. There was a conversation, Mr. Norman.

Q. I understand that. Everybody understands that.

A. It is substantially correct. I don’t recall all the profanity. But here are four men in a room.

Q. I don’t see how you could recall all the profanity.

A. But you know when four men get together and have an idle discussion as you were reciting here, and that’s what it was.

Q. You think it is usual for four men to get together and talk like this?

A. There were no ladies present.

Q. You said that you ——

A. This meeting and all that was said was said to gain the confidence of these men so that I could find out who was behind it. They were agreeing with everything that was said, Mr. Norman.

Q. I didn’t ask you whether they were agreeing or not.

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A. And this was the purpose of this entire meeting, any everything that was said there.

Q. And you think, even though you said that you were acting the part of a good citizen here, you think that conduct like this, and expression of attitudes like that, is

*Testimony of Robert D. Vick*

justified just because there are no women present, is that right?

A. No, sir, I didn't say that.

Q. Isn't that what you just got through saying?

A. I just merely said that you know and I know, Mr. Norman, that when gentlemen — when men get together, they use —

Q. No, I don't know any gentlemen who get together and talk like that.

A. I didn't say that.

Q. That's what you just said.

A. I didn't.

Q. You just said when gentlemen get together they talk like that.

A. I didn't intend to say that. You know it.

Q. That's what you just said.

Now, I am going to ask you if when this discussion started down here about what you wanted, if this wasn't what was said. And I am reading a transcript.

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You said that somebody was trying to approach you to give perjured testimony. And we have introduced this to show that you were the one that was doing it.

Now, I am going to read from the transcript now and ask you if this happened:

"Vick: Now let me ask you this. What do you want?

"Robbins: All I want is the truth, Vick.

"Vick: No, I mean, I mean, what else?

"Robbins: That's all we're interested in."

Did that take place or not?

A. Yes, sir, I recall that, Mr. Norman.

Q. And you still say they were the ones that were trying to bribe you?

A. Mr. Norman, this —

*Testimony of Robert D. Vick*

Q. Answer that. You say they were the ones —

A. I answered you, yes.

This entire conversation, and everything that was said there was said for the sole purpose of trying to find out who was behind Mr. Robbins, which I have never been able to find out, and I knew at a later date that I wouldn't be able to find it out and quit it.

Q. Did he or not say twice there, just like this record shows, that all he wanted was the truth from you?

A. Yes, because I strongly suspected, and he knew that  
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he was recording it.

Q. I didn't ask you that.

A. I said yes.

Q. Didn't that man tell you on two different occasions "All I want out of you, Vick, is the truth"?

A. Yes, sir.

Q. And yet you say he was trying to bribe you?

A. Yes, sir. He made all the statements that he could.

MR. NORMAN: Will you indulge me just a minute, if Your Honor please?

BY MR. NORMAN:

Q. You were trying to impress those fellows down there, weren't you?

A. Yes, sir.

Q. That you were a big shot with the Department of Justice, weren't you?

A. No, I wasn't. I was trying to say anything that I could — if that would have gained their confidence, yes, Mr. Norman.

Q. You were trying to impress them that you were a big shot with the Department of Justice, weren't you?

A. If that would have —

Q. Well, were you or not? I am asking you. Were you?

*Testimony of Robert D. Vick*

A. If that would — yes, if that would have —

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Q. Well, that is all I asked you.

A. If that would have helped me gain their confidence.

Q. Well, I am going to read you a little more and ask you if this took place:

“Robbins: Well, anyway, long that afternoon, he come in and say, I got a little somethin’ for you. I said, what have you got for me? He said, “Well, I got something you like.” He had a whole box . . . of this. Had a whole box of ‘em. Just wonder what he hell they’re going to cost me now.” — talking about cigars.

“Harry: Yeh. He’ll give you a bill on it, too.”

“(Two talking)

“I tell you that cousin upstairs of mine . . . and we was in the hall, there and we just got averted from that strike and a — and went in that night —

“Vick: Jim Neal, this Government prosecutor smokes them cigars . . .”

Now, as I understand, you told us yesterday, and Mr. Neal did, too, that you had never met Mr. Neal until a few days ago?

A. I said I had seen him, Mr. Norman.

Q. I know but you said you didn’t talk to him until a few days ago? That’s what you swore to the jury?

A. I don’t have to talk to a man to know he smokes cigars.

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Q. I didn’t ask you that. Did you tell the jury yesterday that you had never talked to Mr. Neal until just a few days ago? Did you or not?

A. Yes, sir, other than passing him and speaking to him and seeing him in the hall.



*Testimony of Robert D. Vick*

Q. All right.

"Jim Neal, this Government prosecutor smokes them cigars . . .

"Jim: Those big Websters?

"Vick: Yeh!"

"Vick: He gets 'em, I think Jim orders his from Cuba. Did, I think. I don't know whether he can get 'em now or not, but he did get some kind of cigars real big damn long things.

"Harry: That's what they are.

"Robbins: Big green ones, that's what they are.

"Harry: Big green lookin' things.

"Vick: Yeh. Got a green —

"Robbins: Not every person can't smoke them damn things.

"Vick: Got a green wrapper, I know it. He gave me—

"Harry: Yeh, them bastards are hot.

"Vick; . . . one of them damn things one time and I threw it away.

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"Robbins: Aw, cripes.

"Happy: Ah, that's a good cigar. Hell.

"Vick: Ah threw 'em away.

"Harry: They cost what? 45, 35 cents?

"Robbins: What are those Websters, Jim, if you go down and buy three of them . . .

"Jim: Oh three for 5 cents, something like that.

"Harry: High as that?

"Jim: Three for a dollar.

"Harry: Yeh. About three for a dollar.

"Vick: Pierre Sallinger sent me a case of Lowenbrau beer, he drinks it all the time. I drank the" — he used a nasty four-letter word — "out of that.

"Robbins: You mean THE Salinger?

*Testimony of Robert D. Vick*

"Vick: Yeh, this guy that's runnin' for Senator, I think. He sent me to find out — well last fall I went to Indianapolis. Well, I brought back a case, and Walter Sheridan and I drank it.

"Robbins: Lowenbrau?

"Vick: Yeh. And I, in fact, I had, I never drank it be — so that time I brought it on to Jim and he said, "Well, it's a good beer" see, so — I was lookin' for some Munich beer, this beer was made in Munich, so we bought some and listen, I brought some back Sheridan and I drank it, I thought. Well where . . . hell, ain't bach

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beer, bach beer, and he said, I said man this is the best beer I ever drank and it was, and his secretary had it, his private secretary, there was three of em, well, there are five right here in the Federal building. I brought a six pack in.

"Harry: . . . a fifth.

"Vick: Yeh, three of us. He and this girl . . . she gave me one of these statuette things I got sittin' on my table. She gave me that. This a — I called it . . . she says it's a Jesus thing, comes from Europe someplace. Supposed to be the baby Jesus or something. She gave me that. Anyway, she likes this Lowenbrau beer. I was goin' on about. It is good beer and, but it cost me 50 cents a bottle up there, I was —

"Robbins: Yeh, that's . . ." Door opens.

"Vick: Yes, and so this Sa——, he said Salinger drinks it all the time, when I'm going up there I'll get you some — Hell, he says he buys it for, hell, five, six dozen cases, you know. So —

"Jim: Old Pierre looks like he appreciates a good lot —

*Testimony of Robert D. Vick*

"Vick: And he says he drinks it all the time. And he said, I'll get you some of that stuff.

"Jim: Did?

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Q. In other words, it was just another time you were lying, trying to impress somebody with your connections with the Department of Justice, is that right?

A. Just to gain their confidence.

Q. However, Pierre Sallinger was in here for about a week during that time?

A. I did not see him nor have I ever seen him, Mr. Norman.

Q. So you just made this up as a lie trying to impress those people, right?

A. Yes, sir.

Q. In other words, there is nothing you won't say to try to impress somebody?

A. To find out what is at the bottom of a case.

Q. Is that a lie about Neal giving you a cigar?

A. Yes, sir. Mr. Neal never gave me a cigar in his life.

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Q. If he had I wouldn't expect you to admit it.

A. I would admit it if he had.

MR. NEAL: Your Honor, may we move that Mr. Norman's remark be stricken?

MR. NORMAN: I withdraw it and apologize if it offends him.

BY MR. NORMAN:

Q. So that was just some more stuff you made up?

A. Yes, sir.

Q. To, as you say, impress them, when they were trying to make you, and you weren't trying to make them?

A. Yes, sir.

*Testimony of Robert D. Vick*

**THE COURT:** Just a word to the jurors. I notice one or two of you seem to be taking notes from time to time. Sometimes that is permissible, particularly when you have a civil lawsuit on trial. But I doubt if it would be proper in this case. It could lead to trouble. I suggest you just not keep notes. You will have to rely on your own memories as to what the testimony is about any matter in the trial.

**BY MR. NORMAN:**

**Q.** Now, I will ask you if on May 6, you didn't go see Mr. Steele a third time?

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**A.** Mr. Steele came to see me, Mr. Norman.

**Q.** Where did he come to see you?

**A.** At my house.

**Q.** What did you tell him that day?

**A.** I am not sure what I told him, Mr. Norman. I told him one thing I was worried about that I wasn't sure they had made a bona fide offer. I wanted to wait until they had made a bona fide offer that would make a better case for me. For one thing, I didn't think — I realized, or thought pretty strong, Mr. Norman, that these gentlemen were taping these conversations that I had with them, but the Justice Department knew about it, and I couldn't prove it, of course. And I think, to answer your question, that I reported to Mr. Steele the essentials of what went on out there, on all this idle conversation.

**Q.** I ask you again: Can you tell us what you told him?

**A.** Not exactly.

**Q.** Can you tell us anything you told him?

**A.** Yes, sir.

**Q.** What did you tell him?

**A.** I told him that \$250,000 had been offered, or mentioned — I don't think I was sure that it had been an offer. And I think I asked — I told him that I couldn't



*Testimony of Robert D. Vick*

make up my mind and couldn't decide whether they had actually made an offer or not.

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Q. Mr. Vick, did I understand you to say you thought that they were taping your conversations with them?

A. Well, there was always this possibility.

Q. Didn't you just tell the jury you thought that they were taping the conversations?

A. I had thought of it. The thought had occurred to me, yes.

Q. Why did you think they would be taping a conversation with you if they were trying to bribe you?

A. Because, Mr. Norman —

Q. Why would they be making a record of that, if they were trying to bribe you?

A. Because, Mr. Norman, that if they found out in the end that I could not be bought, then they would bring it into court.

Q. Oh, I see.

A. In an effort to discredit me.

Q. Well, you didn't hear the Government bring it into court. You never heard of it until we started asking you about it, did you?

A. I beg your pardon?

Q. You never heard about it until we started in this trial to ask you about it, did you?

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A. Never heard about what?

Q. These conversations with these men?

A. Yes, sir, I admitted these conversations.

Q. In this trial you never heard of it until I started asking you about it, did you?

A. No, sir.

*Testimony of Robert D. Vick*

Q. Now you say that you told me — that the only thing you could remember is that you told them on May 8 that they had offered \$250,00, is that right?

A. Mr. Steele. I don't think that's the only thing I did tell him.

Q. But you did tell him that?

A. I told him the essentials of the meeting, who was there.

Q. And that they had offered you \$250,000?

A. Well, I told him I couldn't make up my mind whether it had been an offer of \$250,00, a bona fide offer.

Q. Did you talk about \$250,000?

A. Yes, sir.

Q. I want to read your report to Mr. Steele.

"Vick advised that he thereafter in company with Harry Childress met Robbins and Nolan at the Holiday Inn and talked to them at approximately 8:30 on May 5 to 2:30 a.m. May 6. Vick said that after much miscel-

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laneous conversation pertaining to golf, baseball and other sports, and matters, that either Robbins or Nolan indicated that it was their understanding that the government had paid Vick \$35,000 plus \$35 per day on a per diem basis."

Did you tell Mr. Steele that?

A. Yes, sir.

Q. Well, did they tell you at the Holiday Inn that they understood you had been getting — that you had gotten

A. No, Mr. Childress had told me that Mr. Osborn had told him this.

Q. No, sir, I am talking about what you told Mr. Steele that they told you.

*Testimony of Robert D. Vick*

"That either Robbins or Nolan indicated that it was their understanding that the government had paid Vick \$35,000 plus \$35 per day on a per diem basis."

Did you tell Mr. Vick that they told you that?

A. You mean Mr. Steele?

Q. Mr. Steele, that they told you that?

A. I — evidently this report is correct. I indicated to Mr. Steele that this figure had been mentioned, and, Mr. Norman, it had.

Q. Don't you know here is the whole transcript and there is not a word about that in the whole transcript that took part between you all?

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A. I know that.

Q. Last night this transcript was delivered to the attorneys. Did the attorneys talk to you about this transcript last night?

A. No, sir.

Q. Have you seen it?

A. No, sir.

Q. Have you gone over it with them?

A. No, sir.

Q. Don't you know that a complete transcript of everything, every word that was said down there, a great part of which I have read, will not show that there was anything said about \$35,000 and \$35 a day, from top to bottom?

A. Well, I —

Q. That you just made this up when you told Steele this?

A. I am sure that it was mentioned there, Mr. Normal. Mr. Childress, for one, mentioned it. He's the gentlemen that brought it up, as a matter of fact. Because he had heard, I understand —

Q. I am not talking about Mr. Childress. I am talking about what you told to the FBI. You said you were report-

*Testimony of Robert D. Vick*

ing everything to them. Don't you know that there wasn't anything like that mentioned, and it doesn't appear in that P. 546

tape that the government lawyers have in their possession there from the first page to the last?

A. It was mentioned, Mr. Norman.

Q. Where was it mentioned?

A. Mr. Childress, I recall, mentioned it first.

Q. Why did you tell Mr. Steele — you say you were reporting to him exactly on everything — why did you tell him they told you that?

A. No, I didn't tell him that — I didn't intentionally mislead Mr. Steele.

Q. Oh, you didn't intentionally?

A. No. I told him the essentials of what was going on.

Q. I will ask you if on that same date you didn't tell Mr. Steele this:

"Vick stated tht he had made no comment to either Robbins or Nolan as to whether he would or would not be receptive to the above offer or whether or not he had acted as an agent for the Government prior to November 1963, or whether he woud agree to see Robbins or Nolan again."

Did you tell Mr. Steele that?

A. I don't recall it, Mr. Norman.

Q. Do you deny you told him that?

A. No, sir.

Q. Well, if you told him that, that wasn't true, was it?

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A. I may have told him something there like that. I don't know. We were sitting in an automobile and I was trying to recall what was said at this meeting as best I could. From memory.



*Testimony of Robert D. Vick*

Q. Just one thing further, Mr. Vick. On yesterday I asked you if in January of this year you didn't go to a lawyer by the name of Sam Wallace and tell — ask him if it — ask him if he would go to Osborn and see if it would be worth — what it would be worth for you to change your testimony?

A. No, sir. Excuse me.

Q. And you said that that wasn't true. You didn't say that to Mr. Wallace?

A. Yes, sir.

Q. I am going to ask you if Mr. Wallace didn't refuse to do what you asked him to, and if when he refused you didn't say, "Well, all right, I have already got somebody else that will"?

A. No.

Q. And if you wasn't talking about Harry Childress?

A. No, sir.

Q. It was after you started talking to Harry Childress, wasn't it?

A. I don't recall when Mr. Childress came to town.

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Q. Well, you know it was after January, wasn't it?

A. Yes, sir, it was.

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**REDIRECT EXAMINATION**

**BY MR. HOOKER:**

Q. Mr. Vick, I want to ask you just a very few questions.

At the time of your first meeting with Mr. Osborn about Elliott, I believe you testified that he suggested you go to see him?

A. Yes, sir.

*Testimony of Robert D. Vick*

Q. Up until that time had you mentioned anything about Elliott to the Government, Mr. Sheridan of the FBI, or anybody else?

A. Mr. Hooker, I don't recall I had. I had mentioned it to John Polk. But I don't think I had mentioned it to John Polk even.

Q. You don't think at that time you had mentioned it to anybody?

A. No, sir.

Q. And the first of that was when you discussed the matter of your being kin to him?

A. Yes, sir. Mr. Sheridan and I may have talked about this entire jury list prior to this, Mr. Hooker. I am not clear about that. I believe Mr. Norman asked me something

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about this yesterday. And we have have discussed this entire list, Mr. Sheridan and I. I don't recall that we had discussed the juror Elliott, no, sir.

Q. Had you discussed with anybody connected with the government the matter of going to see Elliott, of Elliott being kin to you, or you being close to him, anything of that sort?

A. No, sir.

Q. Now, Mr. Vick, as I understand it these various meetings that you had in Louisville, and Indianapolis, and here at the Holiday Inn, did you on each of the occasions that you had those meetings, did you or not first advise someone connected with the government about the meeting?

A. Yes, sir. Before and after, Mr. Hooker.

Q. Before and after the meeting?

A. Yes, sir.

Q. When you went to Indianapolis, did anybody representing the government go with you?

A. Yes, sir.

*Testimony of Robert D. Vick*

Q. Who was that?

A. A United States Deputy Marshal.

Q. And when you went to Louisville and met, did anybody connected with the government go with you?

A. I don't believe they went to Louisville.

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Q. You don't believe they went that time?

A. No, sir.

Q. But you did advise them about it?

A. Yes, sir. I believe I called Mr. Sheridan from Louisville. I called him from Indianapolis, I know.

Q. And did you also call him from Louisville?

A. I am not sure.

Q. You called him when you got back?

A. Yes, sir.

Q. How long before the meeting at the Holiday Inn was it before you went out there and had this long conversation here that was evidently recorded? How long before that was it that you talked to Walter Sheridan?

A. Well, I talked to him a day or two before that, but the afternoon I was scheduled to go, I tried to call him in Washington, and he was out of town. I understand he was in New York or somewhere. And I talked to his secretary. And then the next day Ed Steele came out and I think I talked to Mr. Sheridan the next day, the next morning. I tried to talk to him before I went.

Q. Did Mr. Sheridan tell you to go or not to go?

A. No, sir, he didn't tell me anything.

Q. And then after the meeting, did you tell Mr. Sheridan about the conversation?

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A. Yes, sir, the essentials of the conversation, yes, sir.

*Testimony of Robert D. Vick*

Q. Now, Mr. Vick, I want to know if you can tell me how you got in with these Teamsters?

A. Well, Mr. Childress had originally said that — well, he had originally tried to get the money that was due me for the investigative work in Judge Miller's court from Mr. Osborn. Mr. Osborn said that he wasn't ever going to pay it, wouldn't pay it. And I didn't think he would, but Mr. Childress seemed to think he could get it. So I said, "Well, if you can get it, you can have part of it." So my understanding was — I didn't see Mr. Osborn and didn't talk to him — but I understand that Mr. Childress did go to see Mr. Osborn and he wouldn't give it to him or something. And then Mr. Childress —

Q. Counsel is having difficulty hearing you.

A. Mr. Childress then said he thought he could get it directly from Hoffa, through his friends in the Indianapolis Teamsters, where he had been working for the last four or five years ago. I said the same thing to him then as I said before, "If you can go and get it, all right, goahead."

Q. Is Childress a member of the Teamsters?

A. Yes, sir.

Q. Are Robbins and Nolan both members of the Teamsters?

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A. I assume they are.

Q. Well, did they tell you they were?

A. I assume they were.

MR. NORMAN: I didn't understand what he said.

MR. HOOKER: He said he assumed they were. I asked him if he told him they were and he said yes.

THE WITNESS: Mr. Childress also told me they were.

BY MR. HOOKER:

Q. Do you know what Local they belonged to?

A. I believe 135.



*Testimony of Robert D. Vick*

Q. Where?

A. In Indianapolis.

Q. Now how many meetings altogether did you have with Robbins and Nolan?

A. I believe it was three, Mr. Hooker. One in Indianapolis, one in Louisville, one in Nashville.

Q. Did they at any time suggest that they would pay you any money to change your testimony in this case?

A. Well, this was their entire suggestion, Mr. Hooker, but I never could get them to do anything that I thought was really an overt act, to where I could really do some-

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thing about it.

Q. And these conversations that you had with them, you stated to Mr. Norman that you had them for the purpose of getting them to make an offer or find out what it was all about?

A. Yes, sir, that's true.

Q. Were these statements, a great many of which have been read to you from this transcript, were they true or not?

A. The statements that I made in the meetings with them were completely false. There may have been a few—

MR. NORMAN: Which ones were false?

THE WITNESS: There may have been a few facts in there, but for the most part I made this entire thing up to gain their confidence.

BY MR. HOOKER:

Q. You made it up?

A. Yes, sir.

Q. For the purpose of trying to get information from them?

A. Yes, sir.

*Testimony of Robert D. Vick*

Q. Was anything said to you at any time about the conversations being recorded?

A. In the meetings?

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Q. Yes.

A. No, sir.

Q. We were furnished the transcript of it late yesterday afternoon. There were some telephone calls recorded. Was anything said to you about the telephone calls being recorded?

A. I don't recall it, Mr. Hooker. They might have.

Q. Do you know who handled the recording, and who arranged for it?

A. No, sir.

Q. Are you a Teamster?

A. No, sir.

Q. Everybody you met with was a Teamster but you?

A. Yes, sir.

MR. HOOKER: That is all.

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**RECROSS EXAMINATION**

BY MR. NORMAN:

Q. Before your year's service on the police department, you had been a taxicab driver how long?

A. Me?

Q. Yes, you.

A. I have never been a taxicab driver in my life.

Q. You never drove a cab?

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A. No, sir.

*Testimony of Robert D. Vick*

Q. What did you do before you went on the police department?

A. I worked for the First Federal Savings and Loan.

Q. How long?

A. I don't recall off hand.

Q. Well, you could give us some idea?

A. A year or so.

Q. Where else did you work?

A. Keenan Motors.

Q. How long?

A. A year or so. I am not sure. And an insurance Company.

Q. How long?

A. Mayflower in Indianapolis, four years.

Q. Wait a minute. How long for the insurance company?

A. I don't recall offhand.

Q. You got no idea?

A. Oh, a year or two. I don't know.

Q. Now —

A. I never drove a cab, Mr. Norman.

Q. Now, when Mr. Hooker just examined you he asked you if you had ever told Mr. Sheridan about Ralph Elliott before November, and you told him no. Why, I am going to

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ask you, if on October —

MR. NEAL: Your Honor, he didn't say he told him no. He said they may have gone over the jury list entirely.

THE COURT: Well, that again is for the jury, if there is a difference between you gentlemen on that.

BY MR. NORMAN:

Q. I am going to ask you if on October 21, 1963, you didn't report, not to Mr. Neal, not to an FBI agent, but to Mr. Walter J. Sheridan, if you, Vick, didn't tell Sheridan on October 21 — I am reading Mr. Sheridan's report

*Testimony of Robert D. Vick*

which we demanded and got from the Government —  
“On October 21, 1963 Vick advised that Ralph A. Elliott, Juror No. 5 on Jury Panel No. 1, is a cousin of his. He said that Elliott is a Greyhound bus driver who has had considerable difficulty with his son. Vick said that Elliott's wife whose name was Marie, committed suicide. Vick said that Jack Corn, Juror No. 10, on Jury Panel No. 3, is known to him, if it is the person connected with the Corn Brothers Cleaners and the Brentwood Water Works. Vick said that a couple of years ago George Farris, a law partner of Allen High, and Farris' brother-in-law, were both members of the City Council. Corn was desirous of obtaining a com-  
P. 557

mercial zoning change in the districts covered by Farris' brother-in-law. Corn went to Dick Fulton who is now a United States Congressman, and Fulton went to Vick to see what could be done for Corn. Vick said that he approached George Farris and Farris — Vick said that he approached Farris and Farris agreed to support the zoning change for \$2,000. Corn agreed to pay the \$2,000. Farris' brother-in-law, however, declined to go along with the arrangements and nothing came of it. Vick pointed out that if this situation were known to the defense it could be used as a lever in connection with Corn.”

Did you tell Sheridan that on that date?

A. I am sure I did.

Q. Did you tell him that you attempted to bribe a City Councilman?

A. If that is in his report, I said it.

Q. Did you do it?

A. Yes, sir.

Q. And don't apologize for it, even?

MR. NORMAN: That is all.



*Testimony of Robert D. Vick*

**REDIRECT EXAMINATION**

**BY MR. HOOKER:**

**Q.** Mr. Vick, I am not talking about discussing individual

**P. 558**

jurors on the list. What I am directing my inquiry to is before November 7, I believe was the date, that it was suggested to you by Mr. Osborn that you go to see Mr. Elliott. Hay anybody at any time suggested before that you either go to see Elliott or that you represent that you were going to see Elliott?

**A.** No, sir.

**MR. HOOKER:** That is all.

**MR. NORMAN:** One thing I overlooked.

It will be short, Your Honor.

---

**FURTHER RECROSS EXAMINATION**

**BY MR. NORMAN:**

**Q.** You say they were trying to bribe you in the Holiday Inn on May 5. I am going to ask you if you didn't — and I read in the transcript where you told them your pension would be worth \$25,000, and \$12,000 apiece for each one of the children, if you didn't take a newspaper and write it down, and if that isn't your figure you wrote on that newspaper of May 5 there at the time you told them that?

**A.** Yes, these are my figures.

**Q.** These two figures here you wrote down there when you were telling them?

**A.** Yes. Mr. Robbins handed me the newspaper.

**P. 559**

(Document handed to Mr. Hooker.)

*Testimony of Edward T. Steele*

MR. NORMAN: That is all.

MR. HOOKER: That is all.

(Witness excused.)

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THE COURT: Is the newspaper offered in evidence?

MR. NEAL: Pardon?

THE COURT: Is the newspaper offered in evidence or not?

MR. NORMAN: Not yet, if Your Honor please. We will offer it later.

MR. NEAL: Are these Robbins' initials and Owens initials?

MR. NORMAN: We will introduce it at such time as we think proper.

THE COURT: Do you want it to go in for identification at this time?

MR. NORMAN: Yes, sir.

THE COURT: All right, let it be marked for identification at this time.

(Defendant's Exhibit No. 2 was marked for identification.)

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MR. NEAL: We will call Ed Steele.

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**THE TESTIMONY OF EDWARD T. STEELE**

the next witness, being first duly sworn, was examined and testified as follows:

**DIRECT EXAMINATION**

BY MR. NEAL:

Q. Will you state your name, address and occupation, please?

*Testimony of Edward T. Steele*

A. My name is Edward T. Steele. I am a special agent of the FBI, and I reside here in Nashville.

Q. You are in charge of the Nashville office, I believe, are you not?

A. Yes, sir.

Q. How long have you been a special agent of the Federal Bureau of Investigation?

A. Twenty-two years.

Q. How much time have you spent here in Nashville?

A. The past 14 years.

Q. Now, are you acquainted with a man by the name of Robert D. Vick?

A. Yes, sir, I am.

Q. Did you have occasion some time this year, on one occasion, or more than one occasion, to talk to Mr. Vick?

P. 561

A. Yes, sir, I did.

Q. There is some testimony here that he went to Indianapolis, Indiana, April 19, and met a Mr. Nolan and a Mr. Robbins. Did he tell you of that?

A. He indicated—he did tell me that he had been to Indianapolis and had met a Mr. Nolan and a Mr. Robbins.

Q. And that was long before this trial started?

A. Yes.

Q. Did he ever tell you that he had met Mr. Nolan and Mr. Robbins on May 5 at the Holiday Inn Motel?

A. Yes, he did.

Q. And that was the day after the meeting, was it not?

A. Yes, sir.

Q. As a matter of fact you went out and checked the hotel and found that they had registered there at the hotel?

MR. NORMAN: Just a moment. Don't testify, and don't lead this witness.

*Testimony of Edward T. Steele*

**MR. NEAL:** I apologize.

**BY MR. NEAL:**

**Q.** Did you do anything after he had told you that he had this meeting at the Holiday Inn Motel?

**A.** Yes, I did. I verified that a Mr. Nolan and a Mr. Robbins had been guests at the Holiday Inn.

**Q.** Now Mr. Norman quoted from a report of yours, in

P. 562

which he stated as follows:

“Vick indicated——”

**MR. NEAL:** This is the report Mr. Norman read dated April 30, 1964.

**BY MR. NEAL:**

**Q.** “Vick indicated that he had had no direct contact with either Robbins or Nolan, and further had had no direct contact or communication from any other members of the Teamsters Union, or any other person, wherein a direct offer had been made to Vick in an effort to prevent his testimony at the Osborn trial.”

In telling you that, did he tell you at that time that he had had no direct contact or communication with Nolan and Robbins?

**A.** No, he said he had no direct contact with Nolan and/or Robbins or other Teamsters or anyone else with regard to an offer.

**Q.** A direct offer?

**A.** A direct offer, yes, sir.

**Q.** But that is not saying that he had had no direct contact with Nolan and/or Robbins?

**A.** No, he indicated that he had met Nolan and Robbins.

**Q.** He did say he had met them?

**A.** Yes, sir.

P. 563



*Testimony of Edward T. Steele*

Q. Did Mr. Vick, in advising you of these meetings with Nolan and Robbins, did he tell you that he expected an offer to be made to him to change his testimony?

A. Yes, he did.

MR. NORMAN: Just a minute, Mr. Neal. Now, if Your Honor please—

THE COURT: Objection sustained.

MR. NORMAN: The gentleman wants to testify too bad.

MR. NEAL: I din't want to testify at all.

MR. NORMAN: You are making a good attempt at it.  
BY MR. NEAL:

Q. What if anything did he say about any offer?

A. Mr. Vick told me on April 30 that he had received information from Harry Childress, who told him that he expected that an offer may be made to him for him—

Q. To do what?

A. Not to testify in this case.

Q. Did he say anything, what he was going to do, or not, or might or might not do?

A. He told me that he was going to send word that he would not be receptive to such an offer.

Q. And this was on May—April 30, 1964, is that correct?

P. 564

A. I believe that is the date that he indicated that.

MR. NEAL: You may examine.

---

**CROSS-EXAMINATION**

BY MR. NORMAN:

Q. In other words, he told you on April 30—you all warned him against this, didn't you, is that right?

A. Well, he was warned to this extent: that he should do nothing to put himself in a position to violate any laws.

*Testimony of Edward T. Steele*

Q. And he told you on April 30 that he was not going to talk to them about that any more, didn't he, make an offer to them of any kind, didn't he?

A. Well, he said that he was going to send word through Childress.

Q. Not to many any offer? That was on April 30?

A. I don't know that he used the words "not to make any offer," but that he would not be interested.

Q. Get it down to what it was. On April 30, he told you that he was going to send word that he was not interested in any further conversations about it, with anybody?

A. Any further contacts or conversations.

Q. Any further contact. Did you know that four days later, after he told you that, he went down to Room 324, at this motel down here in the capital area, and talked to P. 565

them and made them a proposition, wrote it down on a newspaper? Did he tell you that?

A. No, sir, he did not.

Q. You didn't know that he did that four days after he told you he wasn't going to do it, have anything else to do with them?

A. He did not tell me that.

Q. Now, then, I will ask you if on April 30, very nearly two weeks after he had talked to these people in Indianapolis, and six days after he had talked to them in Louisville, if he didn't tell you, and you didn't write this down in your report:

"Vick indicated that he had had no direct contact with either Robbins or Nolan." And then if you didn't say, "And further had had no direct contact or communication from any other members of the Teamsters Union, or any other person wherein a direct offer had been made

*Testimony of Edward T. Steele*

to Vick in an effort to prevent his testimony at the Osborn trial."

Your first language was, "Vick indicated that he had had no direct contact with either Robbins or Nolan," and then you add, "and further had had no direct contact or communication from any other members of the Teamsters Union or any other person wherein a direct offer had been made to Vick in an effort to prevent his testimony on the P. 566

Osborn trial."

And that's the exact language of your report to the Department, wasn't it?

A. You are reading from the report?

Q. Yes, sir.

A. Yes, sir.

Q. Now, you say it had another meaning?

A. I say it was dictated by me, and conveyed the idea that he had had no direct contact with Robbins or Nolan or anyone else with regard to someone—

Q. That's not the way it reads, is it?

MR. NEAL: Mr. Norman, please let him finish his answer.

MR. NORMAN: I think an FBI man can finish his testimony.

MR. NEAL: Will you finish your last statement?

A. The report was intended to convey the idea that Vick told me he had no direct contact with Nolan or Robbins or anyone else with regards to an offer to change his testimony.

**REDIRECT EXAMINATION**

BY MR. NEAL:

Q. But at that time he told you he had met with them in Indianapolis?

*Testimony of Edward T. Steele*

P. 567

A. Yes.

Q. Now, when did you learn of the—now when did you learn that he had met with—you said, I believe, in answer to Mr. Norman that he didn't tell you about the meeting at the Holiday Inn? You didn't mean to imply that, did you?

A. No, he did tell me of the meeting at the Holiday Inn.

Q. Here in Nashville?

A. Yes.

Q. With Nolan and Robbins?

A. Yes.

Q. When did he tell you about it?

A. He told me on the 6th of May.

Q. And when was the meeting?

A. It was on the night of the 5th and 6th.

Q. He told you the very next day of the meeting?

A. Yes.

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**RECROSS EXAMINATION**

BY MR. NORMAN:

Q. Mr. Steele, will you read each one of these reports into the record?

MR. NORMAN: May it please the Court, if he will put in copies of these, I don't know whether he has to have

P. 568

these originals. Are these originals?

THE WITNESS: Yes, they are originals.

MR. NORMAN: Will you make each one of them as an exhibit to you testimony, and have them marked and made—will it be all right for him to submit copies of them



*Walter J. Sheridan, Recalled*

if the Court please? I imagine he will want to keep all of these.

MR. NEAL: We have no objection to copies being made exhibits to the case.

BY MR. NORMAN:

Q. Will you look at them and identify them?

A. They are original copies.

Q. You want to keep those. But you will make those exhibits to your cross-examination, and then you will supply us with a copy, or supply the Reporter with a copy?

A. Whatever is agreeable. We have no objection to these being exhibits.

MR. NORMAN: All right. Will you make these three exhibits—if the Court please, we would want these three marked.

(Collective Exhibit 3 was marked for identification.)

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WALTER J. SHERIDAN, RECALLED

the next witness, being previously sworn, was examined and testified as follows:

**DIRECT EXAMINATION**

BY MR. NEAL:

Q. Mr. Sheridan, you are the same Mr. Sheridan who testified a day or two ago?

A. Yes, sir.

Q. You are an investigator for the United States Department of Justice?

A. Yes, sir.

Q. You know Mr. Robert D. Vick, do you not?

A. Yes, sir.

*Walter J. Sheridan, Recalled*

Q. The testimony here has been that Mr. Vick had some meetings with Mr. Robbins and Mr. Nolan —

P. 578

MR. NORMAN: If you Honor please, now, excuse me. The question already shows that it will be rebuttal testimony. He is telling the witness now what a witness has testified on direct for the government, and is calling him with reference to asking him about that testimony.

MR. NEAL: I don't know why we can't bring out relevant testimony, Your Honor.

MR. NORMAN: You can bring out relevant testimony, the law provides for that, as rebuttal, at the right time.

THE COURT: Well, that objection is overruled.

MR. NORMAN: Most respectfully, I except.

BY MR. NEAL:

Q. Did you have any occasion to talk to Mr. Vick about prospective or future meetings he might have with Mr. Robbins or Mr. Nolan?

A. Yes, sir.

Q. Will you tell us what he said to you and what you said to him, in substance?

A. Mr. Vick called me. I was in Washington, and I think on the first occasion told me that he was in contact with a friend of his by the name of Harry Childress, who I had never heard of. He said that Mr. Childress was a member of the Teamsters Union from Indiana, and that Childress had come to him and told him that he could get for Vick

P. 573

the money from Osborn that Vick felt that he had coming from Osborn, which amounted to some \$700.

Vick told me that he didn't know at that point whether Mr. Osborn had sent Mr. Childress to him or whether Mr. Childress was acting on his own. I told Mr. Vick at that

*Walter J. Sheridan, Recalled*

time that I didn't think he should have any dealings with Mr. Childress, and I thought that maybe he was being set up.

Q. Did he say anything else about possibly more money that was coming to him?

A. Well, the next time he talked to me about this he said that Mr. Childress had informed him that it would be worth \$25,000 to him if he would give some kind of affidavit or testimony indicating that he had entrapped Mr. Osborn. He said he had also understood that he would be able to obtain \$50,000 if he could give information which would help Mr. Hoffa.

Q. What did he propose to do further than that, if anything?

A. Well, he had a kind of a two-fold approach to the problem. He felt that he had this money coming to him, he would like to get it if he could.

Q. This \$700.

A. Yes.

He also felt that he wanted to get to the bottom of who  
P. 574

was trying to bribe him, in effect.

Q. Did he tell you that he wanted to get to the bottom of this?

A. Yes, sir. I still told him that I didn't think he should meet with these people under any conditions, and that there was nothing to be gained from it, and urged him not to.

Q. Pardon me?

A. I say, I urged him not to.

Q. But he decided that he would get to the bottom of it anyway?

A. Apparently he did.

*Walter J. Sheridan, Recalled*

Q. He told you he was going to meet with them in Indianapolis. Did he tell you he had met with them in Indianapolis?

A. He told me they wanted him to meet with them in Indianapolis. I told him not to go. He told me he would not go. The next thing I knew, he had gone.

Q. Did he call you from Indianapolis, or there after the meeting?

A. Yes.

Q. Did he tell you he had a meeting with them?

A. He told me that he had a meeting with Mr. Nolan and Mr. Robbins. He told me in effect that nothing hap-

P. 575

pened, and that he just came back to Nashville.

Q. Did he tell you whether or not he took anyone to Indianapolis with him?

A. Yes, he told me he took a Marshal with him.

Q. He took a Marshal with him to Indianapolis?

A. Yes, sir.

Q. Did he talk to you again with respect to any possible meetings with these people?

A. Yes, he told me that he had met with them in Louisville, Kentucky, or that he had gone to Louisville, Kentucky, to meet with them, but nothing had happened. He then subsequently told me that they were coming to Nashville and wanted to meet with him here in Nashville.

Q. He told you that Robbins and Nolan were coming to Nashville and wanted to meet with him in Nashville?

A. Yes, sir.

Q. All right.

A. I again told him that he should not meet with them under any circumstances, and he told me that he wouldn't; but then he apparently did.

Q. Did he tell you after the meeting in Nashville?



*Walter J. Sheridan, Recalled*

A. Yes, after the meeting he told me that he had met with them and that they had offered im \$250,000 to change his testimony.

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Q. Now, all this time he told you that he was going to get to the bottom of who was behind the offer?

A. Yes, sir.

Q. He told you that was the purpose of the meeting?

A. Yes, sir.

MR. NEAL: No further questions.

---

**CROSS-EXAMINATION**

BY MR. NORMAN:

Q. Mr. Sheridan, did I understand you to say that he told you that they sent for him on any of these occasions?

A. That's what he told me, yes, sir.

Q. He didn't tell you that he contacted them on each of those three occasions, did he?

A. No, sir, he did not.

Q. And you told him from the very beginning not to do any of this, didn't you?

A. Yes, sir.

Q. And did you — did I understand you to tell the jury that he told you that he met with them in Louisville and that nothing happened up there? Did he tell you that? Is that what you told the jury here a minute ago?

A. Yes, sir. He told me the same thing about Indianapolis.

P. 577

Q. That nothing happened at either one of those places?

A. Yes, sir.

MR. NORMAN: That is all.

---

*Walter J. Sheridan, Recalled*

**REDIRECT EXAMINATION**

**BY MR. NEAL:**

Q. What do you mean, nothing happened?

A. Well, these were telephone conversations, and Mr. Vick is inclined to be rather cryptic anyway, and what he was saying to me was that, in effect, nothing had been consummated, they hadn't offered him anything, and he hadn't gotten the \$700. This is what I took it to mean.

**MR. NEAL:** I see.

No further questions.

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**MISS OPAL SMITH,**

the said witness, having previously been duly sworn, upon being recalled to the stand, testified further, as follows:

**DIRECT EXAMINATION**

**BY MR. NEAL:**

Q. You are Miss Opal Smith?

A. Yes, sir, I am.

Q. I believe you had just taken the stand the other day when we had some other business to take up?

A. I had.

Q. You testified, I believe, you are the official court reporter for one of the Federal Courts in the Middle District of Tennessee, is that right?

A. I am.

Q. I believe you take down as this lady does things that occur before Judge Miller?

A. I do.

Q. The court at the end of the hall, is that correct?

A. I do.

Q. You were doing this in 1963?

*Opal Smith, Recalled*

A. Yes, sir.

MR. NEAL: I would like this marked as the next Government's exhibit.

THE CLERK: Plaintiff's Exhibit 13 for identification.

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(Government's Exhibit 13 was thereupon marked for identification.)

MR. NEAL: And this marked as the next exhibit.

THE CLERK: That is Exhibit 14 for identification.

(Government's Exhibit 14 for thereupon marked for identification.)

Q. Miss Smith, did you have occasion to be present as the official court reporter at a hearing in Judge Miller's chambers in this court house on Friday, November 15, 1963?

A. I did.

Q. And would you tell us, please, ma'am, who were present in that hearing?

I think you may look there — if you don't remember, you may look at Government's Exhibit number 13 to refresh your recollection.

A. Judge Miller, Judge Gray —.

Q. Judge Miller and Judge Gray?

A. Yes, sir.

Q. They are the two Federal Judges of this District, is that correct?

P. 581

A. That's right.

Q. All right.

A. Mr. Z. T. Osborn, Jr.

Q. Mr. Z. T. Osborn, Jr. Is that the defendant in this case?

A. Yes, sir.

*Opal Smith, Recalled*

Q. Do you know the defendant in this case?

A. Yes.

Q. Will you point him out there?

A. He is seated at the table there to the right of Mr. Norman.

Q. Was he the gentleman who was present before those two Federal Judges on November 15, 1963?

A. Yes, sir.

Q. All right, continue, please.

A. And myself.

Q. And yourself?

A. Yes, sir.

Q. Two Federal Judges, the defendant and yourself?

A. That's right.

Q. Now, at that time, did you make — did you take down what was said in that proceeding?

A. I did.

P. 582

Q. What was said by the judges, what was said by the defendant?

A. I did.

Q. How did you take that down?

A. On the stenotype and also a Tandberg tape recorder.

Q. Stenotype—does that mean a machine like this one right here (indicating)?

A. That's right.

Q. And also a recording machine?

A. That's right.

Q. And did you purport to take every word that was said there?

A. I did.

Q. Now, I hand you what has been marked for identification as Government's Exhibit number 13 and ask you if you recognize that?



*Opal Smith, Recalled*

A. I do.

Q. What is that?

A. It is the transcript of proceedings on November 15, 1963, in the chambers of Judge William E. Miller.

MR. NEAL: Yes, ma'am.

A. (Continuing). And when Judge Miller, Judge Gray, Mr. Osborn and I were present.

Q. Now, have you checked this Government's Exhibit number 13 with your notes—the original notes, and the P. 583

electronic recording?

A. I have.

Q. And is it accurate?

A. It is.

Q. What was said at that meeting is in there?

A. Yes, sir.

Q. All right. Now, did you have occasion to be present the following day, November 16, 1963—that is November 16, 1963, that is the last part of the day following this hearing?

A. I did.

Q. Excuse me. Did you have occasion to be present in the courtroom or the chambers of the Honorable Frank Gray, District Judge?

A. In the chambers.

Q. In the chambers—?

A. Of Judge Gray.

Q. All right. Will you tell us, ma'am,—if you don't remember you may refresh your recollection from that—through Government's Exhibit number 14—will you tell us who was present there?

A. Judge Gray, Mr. Z. T. Osborn, Jr.—

Q. Is that the defendant in this case?

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*Opal Smith, Recalled*

A. Yes, sir. Mr. W. Raymond Denney, Mr. Jack Norman and myself.

Q. All right, this is Mr. Norman, defense counsel?

A. That's right.

A. —In this case. Now, on that occasion, did you take down what transpired or what was said on that occasion, November 16th?

A. I did.

Q. And do you recognize what I have shown to you as Government's Exhibit 14?

A. I do.

Q. What is that?

A. That is the transcript of proceedings of that meeting there that afternoon.

MR. NEAL: All right.

A. (Continuing) November 16, 1963, in Judge Gray's chambers.

Q. All right. Now, have you compared that with your notes as you did the other one?

A. I have.

Q. And is it accurate?

A. It is.

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JOHN E. HAMLIN,

the next witness, having been first duly sworn, testified as follows:

**DIRECT EXAMINATION**

BY MR. NEAL:

Q. Will you state your name, please?

A. John E. Hamlin.

Q. And what is your address and occupation, please?

*John E. Hamlin, Recalled*

A. Nashville, Tennessee; official court reporter for the Middle District of Tennessee, United States District Court.

Q. Now, Miss Smith—do you know Miss Opal Smith?

A. I do.

Q. She occupies the same position?

A. Yes, sir, she is assigned to Judge Miller and I am assigned to Judge Gray.

Q. And Judge Gray is the Federal Judge who normally occupies this federal courtroom?

A. Yes, sir.

Q. What are your duties, the same as Miss Smith's, to take down what transpires?

A. Yes, sir.

P. 589

Q. All right. Now, were you present at a hearing in the chambers of Judge—of Judge William E. Miller on November 19, 1963?

A. Yes, sir.

Q. I see. After you took this down, did you make a written record of it?

A. Typewritten record, yes, sir.

Q. I show you what has been identified as Government's Exhibit number—

THE CLERK: 15.

Q. (Continuing)—15, and ask you if you recognize that?

A. Yes, sir, I do recognize that.

Q. What is it?

A. This is transcript, that I made of the hearing we just mentioned, and this is a typewritten transcript that I made from the original.

Q. Yes, sir.

A. Typewritten transcript.

Q. I believe you made this at my request, did you not?

A. Yes, sir, we ran out of copies.

*Gov't. Exhibits 13, 14 & 15*

**MR. NEAL:** I see.

**A.** (Continuing) And I retyped it.

**Q.** This is transcript you made at which—of the meeting at which defendant was present before Judge Miller?

**A.** Yes, sir.

**Q.** On November 19, 1963?

**A.** Yes, sir.

P. 591

**Q.** I show you Government's Exhibit number 12, which is in evidence here, and ask you if you recognize that?

**A.** Yes, sir, I do.

**Q.** How do you recognize it?

**A.** Well, there in my own handwriting it shows where I marked it filed on November 19, 1963.

**Q.** And was it made an exhibit to that hearing before Judge Miller on November 19, 1963?

**A.** Yes, sir, it was made Exhibit D.

**MR. NEAL:** For the benefit of the record, Your Honor, that is Exhibit number 12, which has been seen by the jury, the transcript of the recording between defendant and the witness Vick. That is the written transcription of the record. The jury has seen that.

**THE PRESENTATION OF GOVERNMENT  
EXHIBITS 13, 14 AND 15**

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**MR. NEAL:** Your Honor, we discussed yesterday with you about that, what we thought. I think this will be permissible, where Mr. Hooker or I would take the stand and answer questions.

**MR. NORMAN:** No, sir. We except to that.

**MR. NEAL:** And the other ask the questions.



*Gov't. Exhibits 13, 14 & 15*

MR. NORMAN: They are examining the witness. And I think you ought to read the deposition — no question and answer to that.

No, sir, we except to that here, if Your Honor please, the way they are doing it, to read the record.

THE COURT: Well, the Court doesn't see it makes a whole lot of difference one way or another.

Suppose you just read the statement or deposition.

MR. NEAL: Your Honor, could I say I don't think it makes any legal difference, but it would be more meaningful  
P. 593

to the jury to have one of us read one part and the other read the other part. I think, as we understand the situation, it is a proper use of the record.

THE COURT: What is the objection to that?

MR. NORMAN: We object to that. That is not proper form, as Your Honor knows. If the one examines the witness — he is reading the transcript.

THE COURT: I don't know that there is any prescribed procedure in that regard. I think Government counsel can do it either way.

Go ahead.

MR. NORMAN: We note a specific exception.

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MR. HOOKER: Since I am the old man, I will sit down.

MR. NEAL: All right.

Mr. Norman, would you like to see a copy?

I am going to hand this to him.

MR. NORMAN: No, sir.

MR. NEAL: May it please the Court, ladies and gentlemen of the jury, we are going to read from Government's Exhibit number 13, the hearing in the Matter of Disbarment Proceedings against Z. T. Osborn, Jr., in the cham-

*Gov't. Exhibits 13, 14 & 15*

bers of Judge William E. Miller, U. S. Courthouse, Nashville, Tennessee, on Friday, November 15, 1963, from 3:05 until 3:25 P.M.

This is said to be transcript of the proceedings. It is Government's Exhibit number 13 now.

(Reading)

“IN THE UNITED STATES DISTRICT COURT  
— IN THE DISRICT COURT OF THE UNITED  
STATES FOR THE MIDDLE DISTRICT OF TEN-  
NESSEE NASHVILLE DIVISION

“In Re the Matter of Disbarment Proceedings against  
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Z. T. Osborn, Jr. From Practice in United States District Court for the Middle District of Tennessee.

“At Chambers of Judge William E. Miller, U. S. Courthouse, Nashville, Tennessee, on Friday, November 15, 1963, from 3:05 till 3:25 p.m.

“PRESENT:

THE HONORABLE WILLIAM E. MILLER, Chief Judge, United States District Court for the Middle District of Tennessee.

THE HONORABLE FRANK GRAY, JR., Judge, United States District Court for the Middle District of Tennessee.

Z. T. OSBORN, JR., ESQ.

OPAL SMITH, Official Court Reporter, United States District Court for the Middle District of Tennessee.”

If it please the Court, I will ——— what shall I do, Mr. Hooker?

MR. HOOKER: Read it.

MR. NEAL: Shall I be the judge?

MR. HOOKER: Yes, read the statement.

MR. NEAL: All right, by Judge Miller

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**MR. NORMAN:** Let me understand, now. Mr. Hooker is going to act the part of Osborn?

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**MR. HOOKER:** I will read Mr. Osborn's answers, right.

**MR. NORMAN:** All right.

**MR. NEAL:** (Reading)

**"JUDGE MILLER:** Now, Tommy, we have asked you to come in because we have information indicating a plan to tamper in connection with the Hoffa case (that is, the upcoming Hoffa case), to tamper with the petit jury panel.

**"Further,** we have information that some specific acts have already taken place in connection with this plan.

**"This information,** which is substantial, indicates that you are personally implicated.

**"You know,** of course, as an attorney, and we now advise you that you have a right to an attorney if you want to be represented and that you have a right not to say anything and that anything you say may be used against you. I am sure you understand that.

**"MR. OSBORN:** Well, of course, I do, Judge.

**"JUDGE MILLER:** I have this further question: Do you have any information concerning any plan or efforts to tamper with this jury or concerning any acts which have taken place for such purpose?

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**"MR. OSBORN:** I do not. No, sir.

**Now,** may I say this? As an attorney and addressed by the Court of which I am an officer, I would not undertake to exercise the privilege and — but I do certainly understand and appreciate your statement about it.

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**Judge Miller:** Well, specifically, do you have any — I take it from the answer that you have just given that that is the full and complete and candid answer on your part?

**Mr. Osborn:** It is. It is; yes, sir.

**Judge Miller:** Have you contacted any person to make an effort to tamper with the jury in any way or had any conversation with any person for this purpose?"

**MR. NORMAN:** If Your Honor please —

**MR. NEAL:** (Reading) " — for this purpose?"

**MR. NORMAN:** The reason I object — the reason I was objecting is because it is now apparent these two attorneys are intoning these statements. I suggest that these answers be read in a simple reading manner without any intoning or emphasis.

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**MR. NEAL:** I will endeavor to do it.

**THE COURT:** All right. The Court hasn't noticed any intoning, as you say, or laying any emphasis, but Mr. Neal says he will endeavor to guard against it.

**MR. NEAL:** Yes, sir.

This is by Judge Miller. He says:

(Reading)

**Judge Miller:** Have you contacted any person to make an effort to tamper with the jury in any way or had any conversation with any person for this purpose?"

**Mr. Osborn:** No, I have not, and I will — Well, there is no point in elaborating, but I have — I should say that I have, in the contacts that I have had with people that have undertaken to do any work that would even bring them close to the jury, I have been extraordinarily careful of — that there should be no such implication.



*Gov't. Exhibits 13, 14 & 15*

"Judge Miller: Now, you, of course, understand that by the use of the word "tamper," I mean improperly influence the jury? Of course, you understand that.

"Mr. Osborn: I do, yes; certainly, certainly.

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"Judge Miller: And, of course, you understand that my reference is to ——— to the jury impaneled at this last term of court which might possibly be selected in the upcoming Hoffa trial?

"Mr. Osborn: Which — yes, sure. We have no misunderstanding at all.

"Judge Miller: Frank ———"

MR. NEAL: I might state for the Court I think he is referring to the Honorable Judge Gray there.

(Reading)

"Frank, do you want to add any questions to that?

Judge Gray: No.

"Mr. Osborn: Now, may I ask this? Would I not ——— Would you feel it proper, since you have addressed the questions to me, to tell me at least the source of the information which doubtless is of gravity and the ——— You consider it of substance or you would not have inquired?

"Judge Miller: I ——— I wouldn't have called you over here. Judge Gray and I ———

"Mr. Osborn: No, unless you felt that.

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"Judge Miller: ——— wouldn't be here together and wouldn't have called you over here at all. Of course, the reason we wanted to call you here at chambers was to have your answer to these questions if you ———

"Mr. Osborn: Certainly.

"Judge Miller: ——— elected to give them.

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"Mr. Osborn: Well, I do.

Judge Miller: Well, I think we should go this far at this time, Tommy, and tell you that — that — as we have already pointed out — this evidence is substantial, and it indicates that an important attempt has been made on your part to contact and improperly influence a juror by the name of Elliott.

"Mr. Osborn: Well, it is — — As I say, I do not — What I wanted is some idea as to the source. Now —

"Judge Miller: Well, if you —

"Mr. Osborn: It is —

"Judge Miller: If you've had no discussions whatsoever or conversations in this regard, which is what you have stated —

Mr. Osborn: Well, I have not had any conversation or any discussion with anyone as to any effort to contact

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Elliott or any other person on the jury.

Well, if your Honor doesn't feel that you could go more — I don't want to impose on your Honor.

I know that in due course if it is checked out — in due course — I would be notified, but it's a — it's a thing that's of very great — It's — Well, you can understand my feeling. I have never had any such implication before in my life, and it is a disturbing thing.

"Judge Miller. It certainly is to us, too.

"Mr. Osborn: It's the kind of thing that I won't sleep with, and I would like any information that your Honor could see fit to give me.

"Judge Miller: Well, of course, nobody — I think you realize nobody realizes the gravity and seriousness of it more than Judge Gray —

"Mr. Osborn: Certainly.

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"Judge Miller: — and I do, and I know that you do, of course.

"Mr. Osborn: Certainly.

"Judge Miller: Frankly, in view of the information that we have had — and we have given this very careful thought just because of the gravity of it and the P. 602

seriousness from your standpoint as a lawyer and an officer of the Court and from the standpoint of the Court itself.

"Mr. Osborn: Sure.

"Judge Miller: And that's — that's the over-riding consideration: your interest, of course, and the Court's interest.

"Mr. Osborn: Of course.

"Judge Miller: And we don't see any alternative to having this matter developed, of course, with full opportunity and full rights on your part to be confronted with any —

"Mr. Osborn: Well, I —

"Judge Miller: — information or evidence and full opportunity to refute it.

"Mr. Osborn: Well, I —

"Judge Miller: Of course, you — you know that's basic, and I don't have to tell you that.

"Mr. Osborn: Absolutely. Well, then, as I — from what your Honor says, at this point, your Honor would not feel free then to say more than your Honor has said?

"Judge Miller: Well, I don't personally feel that we — that we should at this time. I think we have given you a clear indication as to what at least one of the incidents involved is, and you have said that you had no connection whatsoever with it and no discussion

*Gov't. Exhibits 13, 14 & 15*

of any kind with any person whomsoever in an effort to reach anyone which would include Elliott, I assume.

"Mr. Osborn: Certainly. Specifically any one of them.

"Judge Miller: Yes.

"Mr. Osborn: That's entirely true.

"Judge Miller: Now, in order to — to bring this matter to an issue, what we had in mind was a show cause order which would be served on you, of course, to the end that this matter could be developed. And if disciplinary action is indicated, why, then, of course, we are duty bound to take it.

"Mr. Osborn: Well, that's why I was really inquiring as to — as to — Well, in your show cause order, you would — it would then be necessary that — of course, to get down to some particularity. It's — it's — This is the thing: Unless you know what someone has said, I don't know how to even answer. I — I do repeat the statement that I have made to your Honor,

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that I have not engaged in any effort to improperly influence any juror or prospective juror.

"Judge Miller: And that would include Elliott?

"Mr. Osborn: It does. Certainly.

"Judge Miller: And anyone else?

"Mr. Osborn: And certainly anyone else.

"Judge Miller: Well, now, if there should be a show cause order — and, frankly, we don't see any alternative to it —, would you want it to — would you want to have a hearing conducted in private — that is, out of the courtroom, say, at chambers — or would you prefer to have it in open court?

"Mr. Osborn: Well, my preference would be, of course, to have an opportunity — It would, of course, be my preference to have an opportunity to show cause without



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the tremendous punishment that I would take over just the accusation. As an attorney, the mere accusation is — is a great damage.

“Judge Miller: That’s what we had in mind. And, frankly, we want to protect you in every possible way we can consistent with the facts —

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“Mr. Osborn: I appreciate that.

“Judge Miller: — and our duty.

“Judge Gray: We even went into the question, Tommy, as to whether we could have it at chambers whether you wanted it or not. We concluded that we couldn’t in all probability, and we had to give you the opportunity of saying whether you wanted a public hearing or not.

“Judge Miller: That would be our preference if it is your preference because if you refute the charges, why, then, it is a —

And, incidentally, everyone in connection with this matter is under instructions to keep this completely —

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“Mr. Osborn: Well, I appreciate that.

“Judge Miller: — secret. And this — any recording or anything like that will be kept under seal, and will not be released except on order of this Court.

“Judge Gray: That is also true of the show cause order itself.

“Judge Miller: Yes. It will not be disclosed, of course, if that is your preference now.

“Mr. Osborn: Well, certainly; and I am grateful for that because, otherwise, as notorious as the subject matter is, why, even if — if I should completely satisfy your Honors, why, there would always be a hundred

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thousand people in the community that weren't in on the hearing, and they would never be satisfied. I appreciate the hearing at chambers — sure.

“Judge Miller: Well, if that's — if that's all, then, we have a show cause order prepared; and we will follow that course, and I will pass you a copy of it now and a copy to the court reporter so she can make a record of it.

And we would like to set this for a hearing at chambers, in accordance with your agreement, on the 25th of November.

“Mr. Osborn: All right, your Honor. Is that Monday week? Monday week.

“The Court: What is this “at” in here, the hour?

“Judge Gray: It's the hour, I think.

“Judge Miller: That will be — Let's see. Let's pass that to her.

“Judge Gray: That's the original.

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“Judge Miller: That's the original and is to be kept under seal now and not released for filing in the Clerk's office except on our instructions. (Passed document to the court reporter.)

All right, sir. This (handing document to Mr. Osborn) will be your copy.

Let me have that back and put “A. M.” on there just as a matter of strict accuracy.

“(the reported returned document to Judge Miller.)

“Judge Miller: Why don't we give her all these copies to keep under seal?

Will you take care of that, Miss Smith?

“The Reporter: Yes, sir.

“(One original and four carbon copies of the document referred to above were passed to the reporter. The origi-

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nal copy was given to Judge Frank Gray, Jr., on Nov. 18, 1963. The four carbon copies are in a sealed envelope at the back of the original copy of this transcript.)

"Judge Miller: Well, anything that you want to say — anything further?

"Judge Gray: No.

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"Judge Miller: Anything further that you would like to say?

"Mr. Osborn: Well, I deeply regret the — whatever the information is. I deeply regret the necessity for the hearing. I am grateful to the Court for its courtesy. I do think that — whatever it is — that I will be able, I think, to convince your Honors that we have not done that.

"Judge Miller: Well, I — I certainly want to say that I personally hope that's true, Tommy.

"Mr. Osborn: Well, I appreciate that.

"Judge Gray: There's nothing that we would prefer more than that, Tommy. You know that.

"Mr. Osborn: I know that.

"Judge Miller: There is more — nothing in the world that I would hope more than that, and I know Judge Gray is the same way.

"Mr. Osborn: Well, I — I will — I guess I will just have to assemble the people in it, and get them down here, everyone of them, that have — Well —

"Judge Gray: Although you were asked generally, Tommy, about all jurors, of course, the show cause order is limited to the Ralph A. Elliott.

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"Mr. Osborn: Yes. Well, you see what — what we've done, Judge, is parcel out. Some people have taken some

*Gov't. Exhibits 13, 14 & 15*

counties, and some others; and, offhand, why, I will just have to go back and see who has done the work in Springfield, and ——— and just see.

“Judge Miller: Yes.

Now, a further limitation it, and you will notice there, is during the month of November. I guess you noticed that.

“Mr. Osborn: Sure.

“Judge Miller: All right. Well, if that's all, Tommy—

“Mr. Osborn: Well ———

“Judge Miller: ——— we appreciate your coming over.

“Mr. Osborn: Well, I thank you.

“Judge Miller: That's all.

“(Thereupon, at 3:25 p.m., the hearing was concluded.)”

MR. NEAL: May it please the Court, the next one I believe we only have one copy in our possession.

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Mr. Norman, could you provide me a copy of this?

MR. NORMAN: What is this?

MR. NEAL: November 16th.

MR. HOOKER: Mr. Marshal ———

MR. NORMAN: Use the Court's ——— will be all right.

MR. NEAL: I am going to do this. This is the Court's.

May it please the Court, may I stand over here? I will read this. It seems to be the only copy we have.

(Reading)

“In the District Court of the United States

For the Middle District of Tennessee

Nashville Division

“In re the Matter of Disbarment Proceedings Against  
Z. T. Osborn, Jr. From Practice in United States District  
Court for the Middle District of Tennessee



*Gov't. Exhibits 13, 14 & 15*

"At Chambers of Judge Frank Gray, Jr., U. S. Court-house, Nashville, Tennessee, on Saturday, November 16, 1963, from 4:53 till 5:00 P.M.

"Present: The Honorable Frank Gray, Jr., United  
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States District Judge

Z. T. Osborn, Jr., Esq.

W. Raymond Denney, Esq., Attorney for Mr. Osborn

Jack Norman, Esq., Attorney for Mr. Osborn

Opal Smith, Court Reporter.

"Judge Gray: Let me ask you, Mr. Osborn: I assume that Mr. Denney and Mr. Osborn are here in the capacity of attorneys for you?

"Mr. Osborn: They are; yes, sir.

"Mr. Norman; Yes, sir.

"Judge Gray: All right.

Now, it is my understanding that today, Mr. Osborn, you have asked Mr. Hooker — and Mr. Neal perhaps — to be furnished with information as to the basis for the show cause order that the Court entered yesterday.

"Mr. Osborn: Yes, I did. I made the same request that I had made of Your Honor and of Judge Miller on yesterday.

"Judge Gray: And it is further my understanding that you have, since yesterday afternoon, made attempts to contact Mr. Robert D. Vick.

"Mr. Osborn: Yes. Immediately after leaving, I —

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as I — I think I told your Honors I would — I immediately began undertaking to contact all of the persons who had done any work for me — among them, Mr. Vick.

"Mr. Denney: Investigators.

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"Mr. Osborn: Yes, all of them investigators.

"Judge Gray: Had Mr. Vick done any work on my jury panel, Mr. Osborn?

"Mr. Osborn: No, he had not. He had done work only on the ones who were assigned to Judge Miller.

"Judge Gray: All right. Now, let me give you — Let me say, first, that I have talked with Judge Miller who is out of town, and we concur in what I am now doing.

On Friday, November 8, 1963, Judge Miller and I individually were presented with an affidavit by Robert D. Vick in which he made statements as to a conversation which he had had with you in which the name of Juror Ralph A. Elliott was mentioned.

And, according to the affidavit, you had instructed him to contact him, after he said that he knew him and was kin to him, and to get him on your side.

"Mr. Norman: Mr. Vick is kin to Mr. Elliott?

"Judge Gray: That's the statement here, yes.

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On the basis of that affidavit, Judge Miller and I individually —

I was out of the office at the time it first came up, and got here half an hour later.

We individually — and I suppose concurrently — authorized further investigation of the matter including, specifically, an authorization for the Department of Justice to send Robert D. Vick back to talk with you equipped with a tape recorder.

Since that time, we have been furnished with affidavits from Robert D. Vick as to a conversation with you on November 8, 1963, and a further conversation with you on Monday, November 11, 1963. We have also been furnished with a transcript of a tape recording which

*Gov't. Exhibits 13, 14 & 15*

purports to be a conversation between you and Mr. Vick in your office on Monday, November 11. We have also listened to the tape recording itself.

In the affidavits furnished us and in the tape recording, someone — and according to the affidavit, you — authorized Mr. Vick to make an improper contact with Juror Ralph A. Elliott.

Now, that was the basis for the show cause order as we  
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had it at that time.

"Mr. Norman: Judge, may we see those statements?

"Judge Gray: No, sir; not at this time, Mr. Norman. I have summarized it to you, and I think Judge Miller agrees that that's what you are entitled to — to be given the name of the man who has furnished it, and what it does contain, and the conversations that are reported to us.

In addition to that, prior to our issuance of the show cause order, an extensive interview she had with Vick by Mr. John J. Hooker, and we have had a report on that interview.

And that's the basis of it.

"Mr. Norman: Anything, Raymond?

"Mr. Denney: Not unless I know what it was.

It's difficult for us to make inquiry, Judge, intelligently unless we know what it was, you see.

"Judge Gray: I think you know what it is, Mr. Denney. I have just stated it.

"Mr. Denney: You don't —

"Judge Gray: Yes, I have stated that in the conversation on November the 11th, the transcript of the tape

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recording which we have and the tape recording which we have listened to —

**Gov't. Exhibits 13, 14 & 15**

**"Mr. Norman: Judge, we're not mad about it.**

**"Judge Gray: No, I know. I understand that, but just let me state this.**

**"Mr. Denney: I don't know what the conversation was.**

**"Judge Gray: I'm not mad either. But I thought you did understand that the conversation showed that Mr. Osborn authorized an improper contact with Juror Elliott.**

**"Mr. Denney: I say I don't know what the conversation was.**

**"Judge Gray: No, sir; no. That's right. But I'm just stating that that's the basis for the show cause order. That's all — the affidavits and the tape recording.**

**"Mr. Norman: If we can't get any more information, thank you, sir.**

**"(Thereupon, at 5:00 p.m., the hearing was concluded.)"**

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**MR. NEAL: The next — That was Government's number 14.**

**The next is Government's Exhibit number 15.**

**It is: (Reading)**

**"Tuesday, November 19, 1963**

**"Four thirty-five P. M.**

**Nashville, Tennessee.**

**"In the office of Judge William E. Miller, Nashville, Tennessee.**

**"In re: Z. Thomas Osborn, Jr., Attorney, Nashville, Tennessee."**

**There is an index of witnesses, an index of exhibits.**

**Judge Miller states:**



*Gov't. Exhibits 13, 14 & 15*

"Judge Miller: As I told you the other day this matter would be on the record and show the persons present and the time that we convened and the place."

Then the reporter says:

"Judge William E. Miller present and Z. T. Osborn, Jr., present.

"Judge Miller: It is my understanding and the information was brought to me that you might want to make some statement to the Court.

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"Mr. Osborn: Yes, Your Honor, I do.

"Judge Miller: Let me say that I am sure you understand this, but as a matter of formality, I want to make it plain to you that any statement you make is voluntary and that there is no commitment or promise or inducement or anything of that kind other than your own will.

"Mr. Osborn: I want that to be perfectly plain. No promise. No inducement. No representation has been made to me by any person and I am asking Your Honor to permit me to make this statement.

"Judge Miller: Yes. All right, sir. Now, would you want this to be in lieu of the ———, you know, we served you with a show cause order for next Monday?

"Mr. Osborn: Yes.

"Judge Miller: Would you be agreeable to having the hearing here today in lieu of the hearing Monday? Is that agreeable?

"Mr. Osborn: Yes, Your Honor, that is the purpose of asking you to permit me to make a statement.

"Judge Miller: Now, there may be some papers and

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records that I will want to put in the record just as a matter of record.

*Gov't. Exhibits 13, 14 & 15*

"Mr. Osborn: Yes, Your Honor.

"Judge Miller: After hearing your statement. But I think we can defer until a later time. Well, with that understanding then I'm ready to listen if there is anything you would like to tell the Court.

"Mr. Osborn: Well, I want to preface it by saying this, that I owe to the Court a full and complete statement respecting the matters about which Your Honor and Judge Gray first questioned me on the 15th of November. Now, one of the questions that you asked I answered with perfect truthfulness and the second question I did not answer truthfully.

Your Honor asked me whether I was aware of any plan to improperly approach a juror named Elliott. Ralph, I think his name is. I want to just —, I think the best thing to do is to tell Your Honor simply chronologically the entire incident.

"Judge Miller: Yes.

"Mr. Osborn: Now, on another date, I believe it would have been on Saturday, Judge Gray showed me and  
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others with me the courtesy of a somewhat more specific statement of what the matter related to.

"Judge Miller: Yes, he consulted with me about that and we agreed that that should be done.

"Mr. Osborn: It was done with Your Honor's approval.

"Judge Miller: Yes.

"Mr. Osborn: And I want to say that if I omit any essential matter or any matter that is necessary that I affirm or deny I want the opportunity to answer as Your Honor may think the question necessary. Now, to commence with and to come at once to it.

*Gov't. Exhibits 13, 14 & 15*

On or about the first of November I would guess it was, or the last day of October, whenever it was, a deputy sheriff, formerly a deputy sheriff, now with the Metropolitan Government, came to my office and had a conversation with me. I had used this man as an investigator commencing back October, a year ago. And he had had following from what he told me a difficult time in that he had been questioned and harrassed and relieved of his job and one thing and another.

And over the period of months that had intervened  
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between the conclusion of the trial before Your Honor, of Mr. Hoffa, and this occasion, it had been mutually agreeable and really I think expressed, that he had been through absolutely enough and that he would not undertake any further work that might in any way involve him in this forthcoming trial.

So, I had not, when we had undertaken to once again seceure information about prospective jurors, I had not given him any work. On this occasion he said to me, he simply came in and said to me while he didn't want to do any work that might get him involved, that he was going to lose his job as soon as the trial was over, the Hoffa trial was over, and did I have any sort of work that would let him make a little money.

Well, at this very time I had, I had been thinking about this, that the certiorari we had filed on behalf of Mr. Hoffa would be denied probably by the 14th of November, or 15th. And that I should go forward and complete the analysis of the jury of the people drawn from the box, insofar as race and employment and religion is concerned. And I had not turned over to anyone the names that went into Your Honor's court. Mr. Mizell had told

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*Gov't. Exhibits 13, 14 & 15*

me that they would go from Judge Gray's jury to the reserve panel.

So, I thought of it happily, I said, "Well, I do have a thing that you can do that can't possibly involve you, you can get me up race, religion and employment on the bottom 75 people on that jury list."

I said, "Now, I don't want anything else about them. I'm not interested in anything about them because they won't be jurors but I have to be challenged as to the array." Actually, those jurors I hadn't even separated them by counties or done any analysis. I tore him off the bottom of the sheet of one of the lists that the clerk had given us, and I gave it to him.

And he thanked me and turned to go and he said, "Tom, I have a cousin on that jury." And I said, made some remark in reply, and he said, "Should I talk with him?" and I said, "No, you shouldn't talk with him." I said, "You've been in trouble enough."

Now, I had three meetings with Vick that pertained to this subject and possibly four, now I may be running two meetings together. It may be that this is the first meeting, but in my mind I see them separately because

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I think he went out and that the next meeting occurred after he had dictated his report on the names, race, religion, and so on of jurors that had gone to Your Honor's court.

But it could be this same time, but either then or the next time he come into the office, come to the door and said, "Could I talk with you outside?"

Now, as I will explain later, I have gone through this business back and forth believing one way and believing another about wiretap and office bug and so on. So, I got up and went outside with him and when we go outside



*Gov't. Exhibits 13, 14 & 15*

of the building, our office building that is at 218 Third Avenue North, he said to me, "Now this man is a cousin and he is a member of the union, CWA," I think he said, Communications Workers of America, "and I could talk to this man and see what he would do on the jury." And I said to him, "Don't do that." I said, "You're going to get yourself in trouble." I said, "if there is a union man, they will, the Government will probably challenge him anyway." He said, "No, they won't catch me." He

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said, "I've got my story figured out, I could go up and talk with him," and I said, "Well, I still don't want you to do it. It is just not worth it to you after what you have been through. Don't go up and talk to him." He said, "Well, if I happen to run into him and talk with him, would that be all right?"

Now, as I will explain to Your Honor later, I was susceptible to this thing. I was conditioned for it. But at this point I began to step over the line which I want to frankly bare and expose to Your Honor. I said to him, "Well, if you did accidentally run into him and talk with him, I don't suppose there would be any harm in that."

Now, there is maybe some other conversation. The thing, really it runs together in my mind a little bit, and that is why I have said if I'm omitting some detail that Your Honor is familiar with, on the question, I'm sure that I can answer exactly.

"Judge Miller: Yes.

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"Mr. Osborn: But, the next thing of significance that occurred, and with the speed that was surprising, let's say within three days, or let's say this would have been by the fourth, he came back in and he asked to see me.

*Gov't. Exhibits 13, 14 & 15*

And they buzzed me. I said, "Sure, send him in, and he said ———"

"Judge Miller: This is Robert Vick?"

"Mr. Osborn: This is Robert D. Vick. Or this may be the eighth. In other words, if there was the second meeting in which he came back after he had been leaving with the papers then this perhaps would have been the eighth, the eighth. It may be that that is the way it is. The way my memory has it is, it is a meeting that he just talked to me and we dismissed it and then a second time at which he asked me to come out on the sidewalk and which I then at the end even though I had said not to, and with him saying that if he ran into him accidentally and talked to him would it hurt anything, why, I gave him that approval saying, "Well, if that happened, I don't suppose it would be anything wrong with that."

Now, as I say, I may be describing now the meeting of the eighth and Judge Gray has said it was tape-recorded, so if it is, why, forgive me and I think it is the meeting of the eighth.

In any event, this is what occurred. This is just a few days after that conversation in which he says that

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he is going to talk with him. He said, he came in and he said, I had a chance to talk with my cousin the other day." And I said, "Well, what did he say?" And he said, "He said that the juror Tippens was a fool." He says if it had been him he would have taken the \$10,000.00. And so then I launched into a talk with him.

I told him this, I said, "Well, of course, that is so foolish." I said, I said to him, "That is one of the reasons that I have always suspected that Medlin is probably or possibly telling the truth." I said, "If anybody were really going out to try to bribe a juror they wouldn't,

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they wouldn't just walk up and say I will give you \$10,000.00."

I said, "In the first place, like what this man Bell is supposed to have done, offered some colored person or Negro," I may have used the word, "\$30,000.00 to go to offer some other Negro." I said, "Money like that would be so big that whoever it was offered to they would feel like that you were trying to get them in trouble."

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"I said, 'What any sensible person would do would be to not be the aggressor or try to fix a figure.' I said, 'What any sensible person would do would be to if they —, you would have to feel your way and if they said they wanted \$1,000, you could agree to \$1,000, and if they wanted \$1,000, then the way to do it would be to say, well, we'll give you \$1,000, when you are seated and give you \$1,000 when the trial is concluded.'" I said, "Now, that is the only way that it would be done."

"And so after some talk again by detail and if anything it would simply have confirmed actually where I had gotten to a willingness that he talked to him, but still reluctant and fearful of the thing, he said, 'Well, I'm going to go talk to him,' and he was leaving and I said, 'Don't go talk to him. Don't rush the thing.' I said, 'You are going to draw attention to himself and to you.'

"And so then he returned about three days later at the meeting of the eleventh and the conversation went like this. He said, 'I have talked with him and he said he wants \$5,000 and he wants \$10,000, he wants \$5,000 when he is seated and he wants \$5,000 when the trial is over.'

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"And so I said, 'Well, now, that is all right.' I said, 'Well,' I, then, the next thing that I remember that would

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be of significance, I said to him —, I don't remember whether the Brinkley trial or whatever, but anyway this juror had been serving, I said, 'He probably would be discharged and if he is not discharged, he would have to keep this in mind that this is likely to be a lock-up jury from the very beginning and if you make some deal with him then you have to have some way so that if he does get seated that he will know that, so that he will know that he does have his deal that you have made for him.'

"And so we had some —, then he was talking — we talked generally I think may have talked generally about the jury or maybe I said some other encouraging things.

"I would have told him, I expect, I think I told him, 'Now, tell him not to worry. That there will be other people with him on the jury.'

"Now, as to exactly how he concluded it when he left or what he said when he left, I do not have a clear recollection but after — but that as I say is the essential part of the conversation as I recall it and he left. Now — let me go back over in my mind, (respites.) Except

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I believe, Judge, that that is an entirely accurate statement except unless I am wrong in the chronological order of some minor detail that I'm giving about these separate conversations. It may be that I've got a detail here or conversation, let's say, about Tippens one time when it may have been the eleventh or a conversation about — if he wants \$1,000 double it, but I'm trying to give you the whole comment that I made.

"Judge Miller: Yes.

"Mr. Osborn: That would be significant to a full statement of my participation in the matter.



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"Now, I can continue and try to tell you how I came to that place or if we want, if there is some matter that I have not covered that is in his affidavits or tape recording I would like to completely cover it.

"Judge Miller: I expect you would have to hear the tape recording.

"Mr. Osborn: Well, all right.

"Judge Miller: But for the present purposes, is there anything else that you want to tell me that has to do with any of these matters?

"Mr. Osborn: Well, I will tell you this, Your Honor's  
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question about a plan to tamper with the jury, I answered that perfectly truthfully. There is no plan now to tamper with the jury. I say this to Your Honor with absolutely every assurance that not a single juror has been approached. There is no plan that any juror be approached and every person that has taken any part in the investigation has been specifically instructed to not approach any juror and not let a juror know that they are being investigated. I have not been a party to some general plan and there is no plan.

"Judge Miller: You mentioned a moment ago that you told him to tell Elliott that not to worry, there would be others with him. What did you mean by that?

"Mr. Osborn: Well, here, I was trying to admit fully the fact that I got from reluctance into where I was encouraging the man. I said that in order that his cousin be encouraged to make a deal.

"Now of course it was a lie that I told Vick. There is no way in the world I could know who is going to be on the jury. I don't know who is going to be on the jury. And I also knew that as I say to Your Honor, that there is no plan to try to tamper with the jury.

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"Judge Miller: Well, now, at the time you told him that to go ahead, did you have an intent to carry through on it?

"Mr. Osborn: Attempt to approach other jurors?

"Judge Miller: No. No. To pay Elliott off?

"Mr. Osborn: I had really not gotten to what I would do if he came back and made the deal and the man got seated. My thinking had not gone that far. I don't know what I would have done if he had been seated just to speculate about what I would have done, I would have whispered the secret to somebody, Kossman, or somebody else, that could tell some of the people that were around Mr. Hoffa, that, well, maybe not Kossman or whoever, well, it is unfair to speculate as to really as to what I would have done. But I'm just trying to think what I would have done if it did happen.

"Judge Miller: I'm not asking you what you would have done, but was it your purpose to? Did you have the present intent at that time to carry through on it? In other words, \$5,000 if he was seated and \$5,000 at the end of the trial I believe you said?

"Mr. Osborn: Well, my intent was, I didn't have any

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intent to see it through. Really, actually, I may have said to him at that very time, 'He probably won't be seated anyway.'

"In one part of my mind, Judge, I was wanting the thing away from me and in another part of my mind I had gotten to the point where I was completely out of a lawyer's position and into, well, I will make a more detailed statement of that in a minute, but I honestly had no plan as to what I would do if he was seated.

*Gov't. Exhibits 13, 14 & 15*

"I hope and pray that if I had come to my senses I would have myself have challenged the man. I hope that I would have had the sense to do that. But I had no plan about it. But at the time I said it, in my heart I was meaning it. Without, let's say, a specific intention and any feeling in my mind as to what I would do.

"Judge Miller: Did you have any authorization from anyone, Hoffa or anyone else, to contact jurors?

"Mr. Osborn: None whatsoever.

"Judge Miller: To tamper with any jurors?

"Mr. Osborn: None whatsoever.

"Judge Miller: Do you have any authorization for payment of money?

"Mr. Osborn: None whatsoever, none whatsoever, and

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had had no discussion with them, no intimation. It will come to them when I finally tell them what I have done, it will come to them with shock.

"Judge Miller; Well, I suppose then that unless you have something further you would like to say, that we will go ahead with these papers in the record.

"Mr. Osborn: Well, what I would like to say, while I'm talking, I would just like to say to Your Honor to describe to you what did happen to me.

"You might say that it really took two things happened to me. In the first place, there is a tendency on the part I think of anybody to get identified with a client. And in this one after the first trial, I had sort of an opportunity to see Hoffa on a different basis than at his work and to become impressed with his complete loyalty to his men and to place what I was seeing him do against the newspaper stories that were coming out against him, particularly over this voice in Philadelphia election. I saw him time after time plead with the men to treat —

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and I became then, I really graduated over gradually from lawyer for him to a point where I had a respect for him and then friendship and an identification with him.

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That is about the best way that I can describe it.

"Now, at that same time, why, the investigation was going on and we were arguing our motions and various things happened which really put me in this position. I began to feel that he was being persecuted and that others were being mistreated and that the Government was abusing people. And well, a little personal incident happened with Mr. Neal which I'm sure he thought nothing of, but at the time I was angry about it and then Judge Gray scolded us on the motion and then one thing and another came in, until I was by the time this came up, I was really susceptible to the sort of approach that the man made to me. I was, I walked right into the trap. I struggled against it, but so feebly that I think that shows you how much I had gotten over and out of a lawyer's place into where I was — well, there was this also.

"I was, by the whole thing I was semi-exhausted. I had been through a period of 70 or 80 hours of work a week from this whole thing. I had been under an enormous call on my time, and with Kossman and some of the others in the case, they pick up the phone and call you at midnight or three o'clock, and they think nothing of sched-

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uling you a meeting from Washington, and then you are trying to hold your other practice together and you are putting cases off and people calling you, and all you ever get is an unkind word.

"So, as the thing went on all of it lumped together, Judge, put me in a position of where I was just as I say



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I was susceptible to the approach that he made to me. And so I did what I have just described to Your Honor.

"Judge Miller: Now, of course, you were in the other trial?

"Mr. Osborn: I was, yes.

"Judge Miller: The attorney, local attorney from the beginning and you were aware of all these incidents that arose involving possible jury tampering?

"Mr. Osborn: I was, yes.

"Judge Miller: Including the Allen incident and the Fields matter?

"Mr. Osborn: Allen?

"Judge Miller: Allen to the Banner, don't you remember? Somebody was interrogated, somebody that was called for jury service made a statement that somebody called them on the phone.

"Mr. Osborn: And pretended to be a reporter.

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"Judge Miller: Pretended to be a reporter for the Banner by the name of Allen. And, of course, you knew about the Tippens incident because it was reported by the court to the attorneys.

"Mr. Osborn: I did know, yes.

"Judge Miller: And you were aware of the closed door hearing that we had in connection with the Fields matter.

"Mr. Osborn: I was, yes.

"Judge Miller: And do you recall particularly the Ewing King hearing that we had, the closed door session?

"Mr. Osborn: Yes, I do.

"Judge Miller: And you heard the testimony of the witnesses that showed definitely that he had gone up there in an effort to influence a juror?

"Mr. Osborn: Well, now, you know, at the time —

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"Judge Miller: And you heard him come in the court room and take the Fifth?

"Mr. Osborn: I did and you know the thing that impressed me about it wasn't, Your Honor, that there weren't circumstances which fully justified Your Honor's removal of the juror, two things impressed me about it and I think I made a statement at the end of that saying that I was not in concurrence with Your Honor's expres-

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sion which was really tantamount to a finding of guilty against King. Now, Your Honor, in the first place as I understood it because he took the Fifth Amendment treated that as more or less an admission.

Judge Miller: No, no. Definitely not. The undisputed proof showed that he went up there and met with the husband of this juror.

"Mr. Osborn: Yes, but also the proof was —

"Judge Miller: I drew no inference against him on account of the Fifth.

"Mr. Osborn: Then, I misunderstood what Your Honor was saying that since he had taken the Fifth Amendment, there can't be any explanation consistent with the man's innocence.

"Judge Miller: Well, no, I didn't intend that, but aside from that you heard the proof, you heard all the evidence.

"Mr. Osborn: Yes, I did.

"Judge Miller: And you will agree with me that it was convincing, won't you?

"Mr. Osborn: Well, I said to Your Honor that under the circumstances the juror should be removed.

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"Judge Miller: Yes.

"Mr. Osborn: I said to Your Honor that I did not

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concur in Your Honor's expression that King was necessarily guilty. Now that was because of this. The patrolman you recall under Your Honor's questioning he said, now it came to my mind, but I understood him to say he was not asked to do anything about his wife. Now, I may be in error, but I thought that his testimony was that they did not discuss his wife's service on the jury, but that instead they talked to him about getting him a promotion and then Your Honor said, 'Well, didn't this come to your mind that this was the reason?' And he hummed and he hawed and then Your Honor said, 'Well, didn't it come to your mind?' And then he said, 'Well, yes, Judge, it did sort of come to my mind.'

"Now, but believe me, I wasn't intending to say that I thought Your Honor was doing anything other than exercising a quite proper discretion in removing that juror. But I was I thought Your Honor was saying that his taking the Fifth Amendment as a circumstance shows that he is guilty.

"Judge Miller: Well, no, that is not the point. But  
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you were present and heard that proof against Ewing King?

"Mr. Osborn: Yes, I did.

"Judge Miller: And then you were also present in the —

"Mr. Osborn: Gratten Fields matter.

"Judge Miller: Do you recall my making a statement in the Ewing King hearing that I had no reason at that time to believe that any attorney was involved? And that I was glad that that was one problem I hadn't had to deal with? Do you remember me making that statement?

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"Mr. Osborn: I do remember you making that statement, yes, I recall that.

"Judge Miller: And then, of course, these indictments followed after an extensive — did you hear my statement from the bench at the end of the trial?

"Mr. Osborn: Yes, I did, Your Honor. Yes, I did. I was present when Your Honor made that statement.

"Judge Miller: Calling for a special Grand Jury to investigate the hearing?

"Mr. Osborn: I did hear that, Your Honor.

"Judge Miller: That trial lasted for nine weeks, I believe.

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"Mr. Osborn: Yes, sir.

"Judge Miller: And resulted in a mistrial.

"Mr. Osborn: Yes, Your Honor.

"Judge Miller: Do you have any statement that you would like to make to me about the other trial? Any efforts to tamper with the jury in the other trial?

"Mr. Osborn: Well, I will say this, that —

"Judge Miller: That is the Test Fleet case?

"Mr. Osborn: I will say that I do not believe that any of the persons that were actually seated and took part in the deliberations were tampered with. I don't know of any.

"Judge Miller: Do you know of any efforts to tamper with them during that trial?

"Mr. Osborn: No, I do not.

"Judge Miller: By any attorney connected with the case or any party?

"Mr. Osborn: No, I do not.

"Judge Miller: Or any other person?

"Mr. Osborn: No, sir.

"Judge Miller: There was no plan?



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"Mr. Osborn: There was no plan and no effort. I know, no reason to think that exists.

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"Judge Miller: You think all this just happened? That all these charges were made about jury tampering? Do you think that is just a happenstance?

"Mr. Osborn: I do not. I do not.

"Judge Miller: You don't think it indicates any plan or anything?

"Mr. Osborn: I'm inclined to think that it may indicate several diverse plans. I will tell Your Honor frankly what I think, well, I will take the Tippen's case, and without, I want to avoid any release of any information that I have within the privilege, but I don't mind telling Your Honor that Tippens' lawsuit is a mystery to me to this day.

"Judge Miller: Do you mean the fact that he is indicted is a mystery?

"Mr. Osborn: No, not the fact that Medlin is indicted.

"Judge Miller: I mean the fact that Medlin is indicted.

"Mr. Osborn: And it is no mystery to me what Tippens said or that they would have indicted him over that, but the fact that Hoffa is accused of having any contact with him or any participation in that, I have not and I have done as careful an investigation as I know how, and I

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have not found any link that would connect Hoffa to Medlin.

"Judge Miller: Well, of course, after this Ewing King hearing, you knew that King was very closely associated with Hoffa, didn't you?

"Mr. Osborn: I knew that he was spending a lot of time with him.

*Gov't. Exhibits 13, 14 & 15*

"Judge Miller: Well, did that enhance your confidence in Hoffa then, this Ewing King incident?

"Mr. Osborn: Well, it didn't enhance my confidence in Hoffa, but it didn't — but I did not, I did not think that and I had no reason to think that Hoffa had directed him or aided him or counseled him to do it.

"Judge Miller: Well, you did know enough though that after that hearing that Ewing King came in the courtroom every day after that with Hoffa, didn't you, and went back and forth together from the courthouse?

"Mr. Osborn: Yes, Ewing from the commencement had furnished transportation to and from the hotel and also you remember we used to bring in these —

"Judge Miller: That's right. Didn't you think it was a little callous for Ewing King to come back in the courtroom every day and since in the trial after his evidence

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had proved that he had made a secret trip in the nighttime up there to see the husband of a juror, member of the jury?

"Mr. Osborn: Callous is as good a word or bad taste.

"Judge Miller: Bad taste is a little mild, isn't it?

"Mr. Osborn: Well, it is according to this, Your Honor, one man under that accusation would, let's say, consider it slinking away to change his course. Another man would think, well, while I would like to go and be there with my friend, I can't do it because it will be offensive. I knew that certainly neither his nor the appearance of numerous other Teamsters did anything except jeopardize Hoffa's case. They were of no asset to him. And if I had felt free to I would have said Ewing and Big Jim Ivey and bunch of others that come up unsolicited and Mrs. Larry Herd to where people thought she was Hoffa's wife, I would have asked them not to. I did know

*Gov't. Exhibits 13, 14 & 15*

that some people, well recommended that they not come, but they continued to and I didn't feel free to make it a personal issue with him.

"Judge Miller: Well, let's see, I believe we had better  
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go along then and get these in the record. I want to try to get through here at some reasonable time. Is that all now you would like to say to me?

"Mr. Osborn: Yes, Your Honor."

MR. NEAL: And there is an indication that someone else entered the jury room.

Judge Miller said, "Get Agents Sheets, Steele and Grigsby. Tell them to come on up here in the room outside. Isn't there somebody out there to — who is out there?"

And Mr. Lewis — I believe that's Judge Miller's law Clerk — said, "Dissspayne."

And Judge Miller said:

"Tell him to get them. Have Dissspayne step there at the door. (Respite.) Get Sheets and Grigsby.

"(Thereupon, Marshal Dissspayne entered the hearing room.)

"Judge Miller: Get Sheets and Grigsby and Steele and tell them to come right on up immediately, will you?"

"Marshal Dissspayne: Yes, sir.

"Judge Miller: Now, at this time I will offer in evidence and ask that they be made an exhibit to this proceeding, the affidavit of Robert D. Vick sworn to before John E. Hamlin on the 8th day of November 1963. Mark

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that as Exhibit — it has already been marked as Exhibit 1 to the interview of Robert D. Vick, November 15, 1963, but mark it as Exhibit A in this proceeding. Now,

*Gov't. Exhibits 13, 14 & 15*

let Mr. Osborn see that. That will be made a part of the proceeding. (Paper passed to Mr. Osborn. Respite.) This is a part of this proceeding as Exhibit B, statement of Robert D. Vick, dated November 8, 1963, And signed by him before William L. Sheets as Special Agent of the FBI, Nashville, Tennessee. Mark that Exhibit B."

MR. HOOKER: Just a moment. Shouldn't those exhibits be read in at this time?

MR. NEAL: Your Honor, may we read the exhibits to the jury at this time? I believe the defendant has seen them. They were passed to him. I believe the record will show that.

THE COURT: Confer with him about what they are. They are already in evidence, aren't they?

MR. NEAL: One exhibit is, Exhibit D is, and we propose to read that, of course. That is the transcript of the recording.

MR. NORMAN: You don't propose to read it again do you?

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is discussed here.

MR. NORMAN: Well, it has already been read here.

MR. NEAL: When the time becomes appropriate we propose to read Exhibit D. We propose to read them all.

MR. NORMAN: The conversation with the Court would be competent.

THE COURT: Isn't Exhibit D the transcription of the recording?

MR. NEAL: Yes, sir.

THE COURT: I wouldn't think it would be necessary to read that again. The jury has had the full benefit of that.

MR. NEAL: Well, Your Honor, the reason I mention it, there comes a time in here when — I don't know



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whether Your Honor wants to argue this in the presence of the jury.

**THE COURT:** Well, you may read that again, I don't think it would serve any purpose to do that. But what are the others now?

**MR. NEAL:** The other exhibits are A, B, and C. A is the affidavit of Robert D. Vick. And Your Honor will

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remember from what we have read the affidavit that was shown to the jury that he made on November 8, and subsequent to that the judge authorized the department to — the Department of Justice to send him back in with a recording device.

**THE COURT:** That was a statement made here in Judge Miller's chambers. It seems to me that would be part of it and admissible here.

What else now? That is Exhibit A.

**MR. NEAL:** Well, Exhibit B contains the same matter and there would be no reason to read that. That is a statement incorporating the same matter.

**THE COURT:** You are not insisting on reading that?

**MR. NEAL:** I am not insisting on reading Exhibit B, as it contains the same matter.

**THE COURT:** Exhibit A is a short affidavit.

DO you still object to that?

**MR. NORMAN:** Yes, sir.

**MR. NEAL:** Your Honor, at that time the witness Vick was offered, as the matter will show, the witness Vick was offered to be brought in for examination by the

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defendant Osborn, and he declined to cross-examine, or stated that he need not be brought in, even.

**MR. NORMAN:** Vick has already testified about these things.

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**THE COURT:** I thought this whole proceeding was to be in the evidence when it would come in as evidence. Is there any legal reason why Exhibit A should not be received in evidence at this time? Is there any legal reason, now? It is an affidavit.

**MR. NORMAN:** Yes, sir, we object, on the legal reason that it is not competent, or relevant.

**MR. NEAL:** Your Honor, we have offered this to show that the proceedings here so far — there have been some cross-examination of Vick as to why he deceived Mr. Osborn and went in there with a tape recorder. He was pretending to go see a juror. We are offering evidence now that he presented the government with an affidavit saying on November 7, 1963, the defendant Osborn asked him to contact Vick.

**THE COURT:** Well, criminal cases are not tried on affidavits. An accused person is entitled to have the wit-

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ness in court, to face the defendant.

Is that what you have in mind, Mr. Norman?

**MR. NORMAN:** Yes, sir. Affidavits put into a hearing are not competent.

**THE COURT:** Then it will be necessary to bring Mr. Vick back to the courtroom, and have him testify with respect to this affidavit, the fact that he gave it.

**MR. NORMAN:** No, sir, that wouldn't make it competent to come in as a part of this hearing. The record in this hearing is not competent in this case, only the conversations between — with the defendant are competent.

**MR. NEAL:** Your Honor, this affidavit was presented to Mr. Osborn and Mr. Osborn — Judge Miller asked Mr. Osborn if he wanted to cross-examine Vick on it. Now the record will show that.

*Gov't. Exhibits 13, 14 & 15*

**THE COURT:** The record is replete with facts in connection with that affidavit. I think that it is really just surplusage, more or less, to put it in. There may be some legal objection, and we certainly want no error in this

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record. The Court will exclude that affidavit.

**MR. NEAL:** The point I have, Your Honor, this is the affidavit referred to by Judge Gray, based on which they authorized the government for him to go back in with a tape recorder.

**THE COURT:** I understand that. This was a hearing on the question of whether or not Mr. Osborn would be disbarred from practicing in this court, and the affidavit was the initial thing in that proceeding. That was the thing that got it started. Based on that, in other words, the judges ordered the issuance of a so-called order.

**MR. NEAL:** Not only that, Your Honor, but they authorized the Department of Justice to send Mr. Vick back into Mr. Osborn with a wire recorder. The government did not do that on its own.

**THE COURT:** Well, it is all in the record.

**MR. NEAL:** Yes, it is.

**THE COURT:** And I don't feel it would add anything one way or the other. If there is an objection to it, it is sustained.

**MR. NEAL:** Very well, we will abide by your decision.

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Now there are markings of other exhibits here, may it please the Court. Judge Miller says, "Mark as Exhibit C the statement of Robert Vick dated November 11, 1963, signed by Robert Vick before William L. Sheets." And that document was marked.

And then Judge Miller says, "Mark as Exhibit D,"

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which is a transcript of a tape recording of a conversation between —

**THE COURT:** That is already in evidence, and I take it — do you want to read that again?

**MR. NEAL:** For reasons that will become obvious when we get on. Not at this point, Your Honor.

**THE COURT:** All right. It is in evidence, and you have the right to refer to it appropriately at any time in these proceedings.

**MR. NEAL:** We will not go into it now, Your Honor.

"Mark as Exhibit D, which is a transcript of a tape recording of a conversation between Z. T. Osborn and Robert D. Vick of November 11, 1963. This transcript being signed by Robert D. Vick. Make that Exhibit D."

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May I just paraphrase here?

Exhibit E was an interview of Robert J. Vick by John Hooker.

Then William L. Sheets was sworn by Judge Miller and deposed as follows:

"Direct Examination by Judge Miller:

"Q. Your name is William L. Sheets?

"A. Yes, sir.

"Q. Are you a special agent of the Federal Bureau of Investigation?

"A. Yes, sir.

"Q. Where are you stationed?

"A. Nashville, Tennessee.

"Q. How long have you been stationed at Nashville?

"A. Approximately nine years.

"Q. How long have you been connected with the Federal Bureau of Investigation?

"A. Approximately 28 years.

"Q. Now do you know Robert D. Vick?



*Gov't. Exhibits 13, 14 & 15*

"A. Yes, sir.

"Q. When did you first become acquainted with him?

"A. November 8, 1963.

"Q. On that date, did you have occasion to place a tape recorder on him?

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"A. I did.

"Q. What was the nature of that instrument?

"A. It is an Edwards Miniature tape recorder.

"Q. Is it widely used by the Federal Bureau of Investigation?

"A. If Your Honor please, I do not know. It is the first time I have ever used it, but I am sure it is.

"Q. Did you place it on him yourself?

"A. Yes, sir.

"Q. Where was it placed on him?

"A. It was placed in the small of his back and taped with surgical tape.

"Q. How large an instrument is it?

"A. It is approximately six inches long, (indicating by the witness,) approximately half an inch thick. About three inches wide.

"Q. Does it have a wire on it with a microphone or anything?

"A. It has a wire that connects to it that is equipped with two microphones.

"Q. You say this was November 8th?

"A. Yes, sir.

"Q. Did you after following this placing of the recorder on Vick, what happened? What did you have him

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do?

"A. Well, he left the building to go see Mr. Osborn.

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"Q. Did you have him tailed or followed or surveilled to see what he did?

"A. Yes, sir. I followed him to the area of Third and Church.

"Q. Now, I show you a statement which you gave, affidavit which was furnished to the Court, signed by you before John E. Hamlin, notary public, on January — on the 15th day of November 1963. (Paper passed to the witness.) Did you furnish this affidavit?

"A. (Respite) Yes, sir, I did.

"Q. Are the statements therein contained and made true and correct?

"A. Yes, sir.

"Q. I will ask you to read that in the record, please.

"A. (Reading by Mr. Sheets.)

'Affidavit.

"William L. Sheets, being first duly sworn, deposes and says:

"1. That he is a special agent of the Federal Bureau

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of Investigation and was so during the period November 8, 1963 to November 11, 1963.

"2. That as part of his official duties, he observed certain activities of a Robert D. Vick whom he had met in person on November 8, 1963, and on several occasions subsequent to November 11, 1963.

"3. That he has read the document entitled "Chronology of Robert Vick's Activities Observed by the FBI" consisting of two pages, each of which he has initialed and state that so much of the information contained therein as has been described as having been observed by him is true and accurate.

"4. That the observations described and attributed to him on the chronology were made by him on the dates

*Gov't. Exhibits 13, 14 & 15*

set forth at the times stated. He personally observed Robert D. Vick during each of the actions described.' (End of reading.)

"Signed, William L. Sheets and notarized November 15, 1963."

MR. NEAL: May it please the Court, I am sure the Court will remember that Mr. Sheets testified as to what he observed, as did Mr. Grigsby. What was introduced at this time was the sheet detailing the times and places that Vick entered Osborn's offices, and when he came out,  
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with the tape recorder and so forth. All of this has already been testified to. I would like, if there is no objection, to make it a part of the record. This is the thing that was introduced and referred to here as Exhibit G.

THE COURT: Well, the Court hears no objection.

MR. NEAL: Would you mark that as Government Exhibit — whatever it is.

THE CLERK: Exhibit 16.

(Government's Exhibit 16 was marked and received in evidence.)

MR. NEAL: "All right, now as Exhibit — I will mark as Exhibit a paper headed 'Chronology of Robert Vick's Activities Observed by the FBI', is this the paper that you referred to a moment ago in your affidavit?

"A. Yes, sir, it is. I have initialed each page.

"Q. That will be admitted as Exhibit G. And the statements on the chronology sheet represent your observations with respect to his activities?

"A. Yes, sir.

"Q. Goings and comings on those dates. Is that correct?

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*Gov't. Exhibits 13, 14 & 15*

“A. Yes, sir.

MR. NORMAN: So we will understand, you are not acting as Mr. Osborn there. You are acting as Sheets.

MR. HOOKER: Acting as Sheets. These are the answers by William L. Sheets that I am reading.

MR. NEAL: Testifying in this hearing?

MR. HOOKER: Right.

MR. NEAL: “Q. After he came back from Mr. Osborn’s office on the 8th, did you have occasion to take the recorder off of him?

“A. Yes, sir.

“Q. Had it been changed any? Could you tell whether he had removed it?

“A. No, it had not been removed.

“Q. Could you tell that?

“A. Yes, sir.

“Q. How could you tell?

“A. It was in the same manner that I had taped it on him with surgical tape and it was taped in his back.

“Q. Could you have told if it had been taken off of him?

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“A. I believe I could.

“Q. Did you play the tape that you got on that occasion on November 8th?

“A. Yes, sir.

“Q. What happened to it?

“A. Well, there was a malfunction of the recording device and only the first part of his activity was recorded. That is, traffic noise, opening and closing of a door, a conversation with a woman who appeared to be a receptionist, but no conversation between Mr. Osborn and Vick.

“Q. Do you have that tape?



*Gov't. Exhibits 13, 14 & 15*

"A. Not at the moment. It is enroute from the FBI laboratory.

"Q. When will it be here?

"A. I expect it any day. I inquired about it today and as to whether it had arrived in Memphis.

"Q. Do you have the tape of November 11th?

"A. Yes, sir.

"Q. You did obtain that tape off of the recording machine?

"A. Yes, sir.

"Q. Did you place that personally on Vick on that date of November 11th?

"A. Yes, sir.

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"Q. And did you observe him go to Mr. Osborn's office?

"A. I didn't personally.

"Q. Did you take it off of him?

"A. Yes, sir.

"Q. And did you play the tape?

"A. Yes, sir.

"Q. And you have that tape personally?

"A. Yes, sir.

"Q. The original?

"A. Yes, sir.

"Q. Now, in addition to the original, do you have what is called a blown-up copy of it?

"A. I have a filtered copy of the tape and also an unfiltered copy.

"Q. What do those terms mean?

"A. Well, an unfiltered copy of the original tape is merely a recording of the tape and it goes in the recorder. A filtered copy is a recording of the tape that is somewhat improved upon by experts, by erasing certain noises or

*Gov't. Exhibits 13, 14 & 15*

cutting out some of the noise or something of that nature.

"Q. Did you make a transcript of the recording of the 11th?

"A. Yes, I did.

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"Q. Yourself?

"A. Yes, sir.

"Q. Did you do that personally?

"A. Yes, sir.

"Q. I show you an exhibit paper which has been marked in this proceeding as Exhibit D which purports to be a transcript of this conversation of November 11th, did you make that transcript personally?

"A. Yes, I made this transcript. I dictated it and then approved it and made some changes in ink I got it back from the stenographer.

"Q. Now, did this represent your listening to the tape recording?

"A. Yes, sir.

"Q. And to the best of your ability, does this transcript represent what you heard on the tape?

"A. It does.

"Q. In the recording and listening to the recording on the tape could you identify the voice of Robert D. Vick?

"A. . . . . I won't be positive that I could identify his voice.

"Q. Why not?

P. 661

"A. Because I had only met him on November 8.

"Q. Could you identify the voice of Mr. Osborn?

"A. Yes, sir.

"Q. You have known Mr. Osborn for a good while?

"A. Good many years.

*Gov't. Exhibits 13, 14 & 15*

"Q. You have heard him talk on many occasions?

"A. Yes, sir.

"Q. And do you have any difficulty identifying his voice?

"A. No, sir.

"Q. Now, if you have the tape of November 11th — (Respite) Now, as I understand it, this is the original?

"A. That is the original tape that I removed from the tape recorder on November 11.

"Q. Will you make — well, I will file this as Exhibit H. You can place it back in this envelope and let me see the envelope. (Respite. Paper passed to Judge Miller. Respite.) It has on the face of the envelope, one roll of Miniature tape recorded November 11, 1963?

"A. Yes, sir. This tape also has my initials and the P. 662

date.

"Document referred to above was marked Exhibit H by John E. Hamlin, Official Court Reporter, and will be found among the exhibits in this case.)

"Q. On the envelope?

"A. On the tape itself, on the spool, that is.

"Q. All right. This will be Exhibit H. In addition to that where is the filtered copy of this?

"A. If Your Honor please, the filtered copy is on the machine. I just took it out of this box and put it on the machine in the event you or Mr. Osborn wanted to hear it.

"Q. Where is the machine?

"A. It is in my office on the 7th floor.

"Q. All right.

"A. This is the unfiltered copy that I obtained from the FBI laboratory in Washington.

"Q. Now, unfiltered, tell me again.

*Gov't. Exhibits 13, 14 & 15*

"A. It means that it is merely a recording of the original tape. This one is somewhat improved upon.

"Q. The unfiltered one I will ask you to file that as Exhibit J.

"(Document referred to above was marked Exhibit J  
P. 663

by John E. Hamlin, Official Court Reporter.)

"Q. (continuing by Judge Miller) How do you play this recording? On a machine?

"A. Yes, sir, you play it on a play-back machine. Or you can play it back on the little tape recorder.

"Q. Do you have to use earphones?

"A. Well, it is better. It is more audible and clearer to use earphones.

"Q. All right. Do you have it downstairs?

"A. Yes, sir.

"Q. Suppose you go — first I want to see if Mr. Osborn has any questions he wants to ask you, then you can go and be getting the machine and bring it up.

"Mr. Osborn: I have no questions.

"Judge Miller: All right, you get that and then I will be talking to Mr. Steele. Send him in.

"(Respite. Thereupon, Mr. Ed Steele entered the hearing room.)

"Judge Miller: Now, I didn't reiterate this proposition, of course, you are aware of. I want to see if you understand it. You have a right to have this hearing in public.

"Mr. Osborn: Your Honor covered that in the prior  
P. 664  
conversation.

"Thereupon, Mr. Edward T. Steele was sworn by Judge Miller.)



*Gov't. Exhibits 13, 14 & 15*

MR. HOOKER: I will read the answers of Edward T. Steele and when I read it, it will be Mr. Steele speaking, not Mr. Osborn.

MR. NEAL: And I will be Judge Miller.

"Direct Examination by Judge Miller:

"Q. Your name is Edward T. Steele?

"A. Yes, sir.

"Q. You know Mr. Osborn here, of course?

"A. Yes, sir.

"Q. How long have you known him?

"A. I have known Mr. Osborn on sight for ten or twelve years or longer.

"Q. Do you know Robert D. Vick?

"A. Yes, sir.

"Q. How long have you known him?

"A. Oh, for approximately six months.

"Q. I hand you an affidavit which has your name, purports to be your signature, sworn to before John E. Hamlin on November 15, 1963. I have got this exhibit marked up at the top as Exhibit K. I will ask you if you made this affidavit? (Paper passed to the witness. Respited.) And furnished it to the court?

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"A. Yes, sir, I did.

"(Document referred to above was marked Exhibit K by John E. Hamlin, Official Court Reporter.)

"Q. All right, you may be seated. Keep it with you. I will ask you to read that in the record, please.

"(Reading by the witness.)

"Affidavit.

"Edward T. Steele, being first duly sworn, deposes and says:

"1. That he is a special agent of the Federal Bureau of Investigation and was so during the period November 8, 1963 to November 11, 1963.

*Gov't. Exhibits 13, 14 & 15*

"2. That as part of his official duties, he observed certain activities of a Robert D. Vick, whom he had met in person on an occasion previous to November 8, 1963, and on several occasions subsequent to November 11, 1963.

"3. That he has read the document entitled "Chronology of Robert Vick's Activities Observed by the FBI" consisting of two pages, each of which he has initialed and state that so much of the information contained therein as has been described as having been observed by him is true and accurate.

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"4. That the observations described and attributed to him on the chronology were made by him on the dates set forth at the times stated. He personally observed Robert D. Vick during each of the actions described.'"

MR. HOOKER: I think they should be passed to the jury, if I may make the suggestion, Your Honor.

MR. NEAL: Maybe we should get the next one first.

MR. NORMAN: What should be passed to the jury?

MR. HOOKER: Those chronologies, an exhibit to this.

MR. NORMAN: I have no objection. I don't see the materiality.

MR. NEAL: Wait until we get to the next one.

MR. HOOKER: All right.

MR. NEAL: "Q. (By Judge Miller) All right, now, this will be admitted in evidence as Exhibit K. I now show you Exhibit G and ask you if this is the chronology sheet that you refer to in your affidavit?

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"A. Yes, sir, it is.

"Q. Are the statements made and contained in your affidavit true and correct in every respect?

*Gov't. Exhibits 13, 14 & 15*

"A. Yes, sir, they are.

"Q. Did you have occasion to listen to this tape recording of November 11?

"A. No, sir.

"Q. Is there anything else that you know about this matter, Mr. Steele, that you would like to state to the court?

"A. No, sir.

"Judge Miller: All right, any questions, Mr. Osborn?

"Mr. Osborn: No, Your Honor.

"Judge Miller: All right, have Charles come in, Grigsby.

"Mr. Steele: Your Honor, Mr. Grigsby is, not knowing that his services were required here, went to Memphis. I am trying to get him back on a plane right now.

"Judge Miller: Let's see. I don't know that that is necessary.

"Mr. Osborn: If his affidavit is simply that he did initial and sign —

"Judge Miller: Do you know his signature?

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"Mr. Steele: I am acquainted with his signature. I see it daily on daily reports.

"Judge Miller: Is that his signature?

"Mr. Steele: In my opinion this is his signature.

"Mr. Osborn: I don't object. It is unnecessary to call him in.

"Judge Miller: You don't have to call him. I will admit this as Exhibit L.

"(Document referred to above was marked Exhibit L by John E. Hamlin, Official Court Reporter.)

"Q. (By Judge Miller) Do you know that his affidavit was furnished to me along with these other papers, don't you?

*Gov't. Exhibits 13, 14 & 15*

**A.** Yes, sir, as a matter of fact, I witnessed his signing of the affidavit.

**Q.** Will you read that into the record, please? Exhibit L?

**Q.** (Reading by Mr. Steele.)

**"Affidavit.**

**"Charles F. Grigsby, being duly sworn, deposes and says:**

**"1. That he is a special agent of the Federal Bureau of Investigation and was so during the period November 8, 1963 to November 11, 1963.**

**"2. That as part of his official duties he observed certain activities of a Robert D. Vick, who he had met in person on an occasion previous to November 8, and on several occasions subsequent to November 11, 1963.**

**"3. That he has read the document entitled "Chronology of Robert Vick's Activities Observed by the FBI" consisting of two pages, each of which he has initialed and state that so much of the information contained therein as has been described as having been observed by him is true and accurate.**

**"4. That the observations described and attributed to him on the chronology were made by him on the dates set forth at the times started. He personally observed Robert D. Vick during each of the actions described."**

**"Signed, Charles F. Grigsby.**

**Q.** (By Judge Miller) That is Exhibit L and will be so admitted. Now, the transcript of the hearing in this matter on November 15th —"

**MR. NEAL:** At this time, may it please the court, we will pass this chronology sheet, Exhibit 16, to the jury.

**MR. NEAL:** Judge Miller says:



*Gov't. Exhibits 13, 14 & 15*

“That is Exhibit L and will be so admitted. Now the transcript of the hearing in this matter on November 15th, I believe it was, November 15th, transcript of that hearing will be filed and made Exhibit M to this hearing. All right, I don't have that now, but you can get that from Opal Smith. She took it. All right, now, questions that you would like to ask him?

“Mr. Osborn: No, Your Honor.

“Judge Miller: Tell Bill Sheets that we are ready for him now. (Respite.) This is Mr. Sheets, now, have you set up the machine so that this tape can be played back?

“Mr. Sheets: Yes, sir.

“Judge Miller: And listened to it?

“Mr. Sheets: Yes, sir.

“Judge Miller: Tell me which tape this is that we will be listening to.

“Mr. Sheets: This is the filtered copy of the original tape.

“Judge Miller: And you have personally listened to this, I believe?

“Mr. Sheets: Yes, sir.

“Judge Miller: And was it from this tape that you made this transcript which is filed as Exhibit D in this

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proceeding?

“Mr. Sheets: I used all three tapes including the original.

“Judge Miller: And including this one that is about to be played?

“Mr. Sheets: Yes, sir.

“Judge Miller: All right, now, and it was from this that you made this transcript?

“Mr. Sheets: Yes, sir.

“Judge Miller: From this tape?

*Gov't. Exhibits 13, 14 & 15*

"Mr. Sheets: Yes, sir.

"Judge Miller: Now you have the machine ready now as I believe you have already stated so that it can be played back?

"Mr. Sheets: And listened to by two people with ear-phones.

"Judge Miller: Do you want to hear it, Mr. Osborn?

"Mr. Osborn: Well, if it has a matter that I have not covered or Your Honor thinks I should.

"Judge Miller: This is your privilege to hear and it ought to be made a part of the record. It is already in the record.

"Mr. Osborn: It is in the record and Your Honor has heard it.

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"Judge Miller: I have heard it and I want to hear it again.

"Mr. Osborn: Surely if Your Honor wants it.

"Judge Miller: Suppose you get the earphones and I get the earphones and we will listen to it. And let record show that that is what we are doing at this time."

And then Judge Miller says: "And I hand you the transcript marked Exhibit D and you can follow that at the same time you listen to it.

"Mr. Osborn: All right.

"(Paper passed to Mr. Osborn. Off the record discussion.)

"(Thereupon, Judge Miller and Mr. Osborn put on the earphones and certain proceedings were had out of the hearing of the court reporter.) (At 6:05 p.m., November 19, 1963, at Nashville, Tennessee, the playing of the tape was concluded.)

"Judge Miller: That seems to complete it. It is now 6:05 p.m.

*Gov't. Exhibits 13, 14 & 15*

**"Mr. Sheets: If Your Honor please, if you would like this in the record, I need to run it back.**

**"Judge Miller: Do you mean do I want the tape in the record?**

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**"Mr. Sheets: In order to put this tape in the record I would like to roll it back to its beginning.**

**"Judge Miller: All right. You don't have to do it right now?**

**"Mr. Sheets: No.**

**"Judge Miller: Has that tape been filed as a part of the record? The one we just listened to? What copy is that?**

**"Mr. Sheets: This is the filtered copy.**

**"Judge Miller: Make that Exhibit N.**

**"(Document referred to above was marked Exhibit N by the Court Reporter.)**

**"Judge Miller: How long will it take you to run that back?**

**"Mr. Sheets: Just a minute."**

**MR. NEAL: Let the record show that Exhibit N in that hearing is now Exhibit 11 in the present trial.**

**"Judge Miller: Okay. (Respite. Mr. Sheets running the tape back.) All right, now, you have the tape that we just listened to?**

**"Mr. Sheets: Yes, sir.**

**"Judge Miller: Played to Mr. Osborn and to me in a box marked Exhibit N?**

**"Mr. Sheets: Yes, sir.**

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**"Judge Miller: Now, any further — would you like to ask him any questions?**

**"Mr. Osborn: No, sir, Your Honor.**

*Gov't. Exhibits 13, 14 & 15*

"Judge Miller: Wait on me right outside there, Bill. Stay right out there and don't go back to your office.

"Mr. Sheets: All right.

"(Thereupon, Mr. Sheets retired from the Judge's office.)

"Judge Miller: Now, I believe that at this point — now, this Vick, Robert D. Vick is here, available, and I can get him in here if you want him. If you want to cross-examine him. These affidavits and various statements have been made and given and in this type of proceeding I'll consider them. Do you have any objection to my considering these affidavits without calling him personally in here to testify?

"Mr. Osborn: No, I do not. I have indicated to Your Honor — well, I don't have any objection to your considering the affidavits. They are deficient in this, they would lead you to believe that I was aggressor in it. I was not the aggressor in it.

"Judge Miller: Well, you will have a chance to make  
P. 675

a further statement, but I do tender Vick to you for cross-examination; if you would like to ask him any questions whatsoever he is available and he is right here.

"Mr. Osborn: It would not be necessary.

"Judge Miller: All right, well, you don't want to ask him any questions?

"Mr. Osborn: The essential matters I related to Your Honor are in the statement.

"Judge Miller: And you don't want to ask him any questions?

"Mr. Osborn: No, sir.

"Judge Miller: Now, at this point I think probably you ought to be sworn and let me ask you a few questions under oath.



*Gov't. Exhibits 13, 14 & 15*

“(Thereupon, Mr. Osborn was sworn by Judge Miller to testify the truth, the whole truth, and nothing but the truth.)

“Mr. Osborn: I do, Your Honor.

“Judge Miller: Now, do you repeat to me under oath the substance of the statements that you made heretofore about your connection with this matter?

“Mr. Osborn: Yes, I do.

“Judge Miller: Did you listen to the tape with me just a moment ago which purported to be a recording of P. 676

a conversation between you and Vick on November 11?

“Mr. Osborn: I did.

“Judge Miller: Did you follow that with the transcript?

“Mr. Osborn: Yes, I did.

“Judge Miller: Which I believe is marked in this proceeding as Exhibit D?

“Mr. Osborn: Yes, Your Honor.

“Judge Miller: And could you detect and make out the substance of this transcript from that recording?

“Mr. Osborn: Yes.

“Judge Miller: And you would say then from having listened to the tape that this is a substantially correct reproduction of what took place?

“Mr. Osborn: It is substantially correct. There are things that I could — yes.

“Judge Miller: You could follow this that you see?

“Mr. Osborn: I could follow.

“Judge Miller: That you see on the transcript, you could follow it on the tape?

“Mr. Osborn: Yes.

“Judge Miller: Now, did you observe on the tape recording that at several points in the conversation that

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the conversation was in whispered tones? Did you observe that? Detect that?

“Mr. Osborn: Well, the tape recorder leads to that impression, but there wasn't any whispered tones. What it was, if I lean back in my chair there and him sitting across from me, there would be a difference in pick-up. I don't recall any whispered tones. I don't recall any whispering at all. And I didn't get that impression. There is that variance in the amount of noise, but I didn't have that impression from the tape that some of it was whispered.

“Judge Miller: Well, judging from what was the substance of the conversations, it is a type of thing you wouldn't want anybody to hear, isn't it?

“Mr. Osborn: Well, that is true. I want to say this, that in this situation with Vick, and part of why that I was into the thing with him, or got carried along as I did was this, that — well, Your Honor has met him and you may know something of his background and a part of what I was saying to him was really half in fear of him and half to get rid of him and to get away from the thing and part of it as I have said to Your Honor,

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grew out of the way that I had gotten in the case.

“And on some of that, just to hear it bring back — I was saying it and not wanting to say it, and then I would perk myself up, well, that — that's not — maybe entirely clear, but that may account for some of the way that I was maybe dropping my voice and not really wanting to say what I was saying. Hating to say it. And disliking myself for saying it.

“Judge Miller: You notice in this recording transcript

*Gov't. Exhibits 13, 14 & 15*

that after you got back into you roffice with Vick that the first question asked was by you and you said, 'How far did you go?' You made that statement? How far did you go?' Well, you knew, apparently from that question that would indicate that you had expected him to contact this juror before. Isn't that right?

"Mr. Osborn: Well, I have told Your Honor about a conversation of the 8th.

"Judge Miller: Of the 8th, yes.

"Mr. Osborn: But I don't remember, I don't know why I should have started out that way. I started, I thought that the conversation started like this. Well, I have told Your Honor my recollection of it.

P. 679

"Judge Miller: Of course, the conversation is here on tape and it speaks for itself, doesn't it?

"Mr. Osborn: Yes, it does.

"Judge Miller: Now, I have no intention now to cross-examine you or subject you to anything of that sort. I don't believe that is necessary.

"Mr. Osborn: I realize that, Your Honor.

"Judge Miller: But now I do want to advise you, and I know that being an experienced lawyer as you are, that this is probably not necessary, but you do know that as an officer of this court under these present circumstances that it is your duty to make a frank and open and complete and full statement to the court as an officer of the court.

"Mr. Osborn: That is why I am here.

"Judge Miller: And you are telling me that your explanation of this matter is that this is one single isolated incident and nothing similar to it on your part ever happened either in the former Test Fleet case or in this case?

*Gov't. Exhibits 13, 14 & 15*

**"Mr. Osborn: That is exactly what I am telling Your Honor.**

**"Judge Miller: And you are telling me that it is your position that you were more or less sort of led into this by a suggestion coming from Vick?**

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**"Mr. Osborn: I was.**

**"Judge Miller: And that is your explanation?**

**"Mr. Osborn: Yes.**

**"Judge Miller: Now, do you have anything that you would like to bring to the attention of the court? Do you have any witnesses you want me to listen to? Any persons you would like to have make a statement or is there any matter whatsoever in the nature of evidence, that you would like to be taken into account in this determination of this matter?**

**"Mr. Osborn: Well, I would like to state to you this which I don't know of any reason to, I don't think anyone would challenge it, that aside from this incident and I know that the FBI has questioned them and if there was the faintest variance in what I'm going to say to Your Honor that it would be part of this case, but I have, throughout I have been conscious of the fact that there would be investigation, that it would be watched. And I have tried with these men that have worked, to ferociously instruct them as to the proper method of conduct. And I have warned them repeatedly against even putting themselves in a position that would be difficult even for them to explain. Sent them out in pairs and with written instructions as to the very limited contacts that were available to them.**

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"Now, this man Vick was treated and instructed in the same way and throughout what happened and why he undertook to do this I do not know. I don't even try to speculate as to what his motive might have been on it or what it was, but when he came to me with this thing of, I have a cousin and like he said, he said, 'I told Polk of this; did Polk mention it to you?' Polk had not mentioned it to me. I did not know that. He brings it up.

"And then as I have told Your Honor, this conversation took place in which he said that he wanted to do this and I told him not to do it. That he would be in trouble. That he had been through enough trouble. And then did conclude as I told you in the earlier statement that he said, 'Well, if I run into him by accident, would that be all right?' And there as I say weakly I said, 'Well, all right. I guess that would be all right.' I said to him.

"Now, then, the chain of conversations went as I have described to Your Honor. He in his affidavits, I'm not trying to blame him for it, he is there for one purpose, he is not there to try to write down anything that would show he was the aggressor, but I am telling you that these things that I told you did occur and it occurred

P. 682

as I am telling you. His affidavits don't particularly conflict, but they lead to the different impression of me and as to what I was into.

"Judge Miller: And you are telling me that even though all of this conversation took place, which apparently covered some 15 minutes, in your office, and you talked about this \$5,000, about it being a deal, and about how he should sit on the jury and not swing one way or the other and matters of that kind, that this all origi-

*Gov't. Exhibits 13, 14 & 15*

nated originally in his mind and not in yours. Is that right?

"Mr. Osborn: That is true. That is true.

"Judge Miller: And that this and that even though you discussed, said it was a deal, told him it was deal, \$5,000 if he was selected on the jury and \$5,000 at the conclusion of the trial if he hung the jury, after you mentioned that, that you just said that without having any intention of carrying it out if he was selected on the jury?

"Mr. Osborn: I said it with — at the time I was saying it, with the intention and at the very time that I was saying it with also the intention of getting shed of him and not doing anything as I said without any plan.

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"Judge Miller: Suppose he had been selected on the jury and had hung the jury, would you have paid him off?

"Mr. Osborn: I would not have — I don't believe I would have done a thing like that.

"Judge Miller: Did you intend to do it at the time you made the statement?

"Mr. Osborn: At the time I made the statement I was intending to close the conversation with Vick.

"Judge Miller: Were you intending to carry out your part of the deal? That is what I want to know.

"Mr. Osborn: I said my plan in my mind, I wasn't that far. I was hoping and mentioning it to him in the negative term. I was figuring that the man would be challenged and hoping that he would be challenged and I hoped this, that if this thing, if I had not been caught short before the point, I hope I would have come to my senses and challenged him myself. I did not actually —

*Gov't. Exhibits 13, 14 & 15*

"Judge Miller: Where did you intend to get the money on this \$5,000?

"Mr. Osborn: I didn't have any plan, Judge, about getting money or —

"Judge Miller: How could you talk about Five Five,

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total of \$10,000 without having any source from which to get the money? Were you just engaging in idle conversation, idle talk? Wasn't this a pretty serious thing for you to be doing?

"Mr. Osborn: Yes, it was. Yes, it was.

"Judge Miller: And it was a dangerous thing, were you aware of it?

"Mr. Osborn: Yes, I was.

"Judge Miller: And you are telling this court that you did it for just more or less idle conversation?

"Mr. Osborn: After what had gone before. I do not say that it was idle conversation. I'm only trying to tell Your Honor really where I was right at the very time the conversation was happening. I was not in any position to offer the man any money or to pay him any money. Now, what I would have done if I had been faced with a need for the money would be purely speculation. I have no reason to think that Hoffa or any other person would have paid him the money.

"Judge Miller: Well, in other words, you did it then without having any, any source from which to —

"Mr. Osborn: I had no source and no authorization.

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"Judge Miller: Well, is there anything further you would like to say? I believe that is all I have.

*Gov't. Exhibits 13, 14 & 15*

"Mrs. Osborn: No, Your Honor, you've been very patient. I would like to say a matter that I don't guess I have to say, that I bitterly regret the necessity for Your Honor's having this hearing. I know that Your Honor has been in the profession and Your Honor knows the heartbreak that I have left at home.

"Judge Miller: Yes. Yes.

"Mr. Osborn. And with my partners and my friends I would appreciate any consideration the court could give me.

"Judge Miller: All right. Now I will say this before we adjourn, that I will consider this matter and determine what disposition should be made of it. And I'm sure that you do realize that this is a serious proposition.

"Mr. Osborn: I know that, Judge, I know that.

"Judge Miller: All right. Well, I think that is all if you have nothing further. Let me make this further statement. I told you the other day that this, at your option, that the hearing would be private.

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"Mr. Osborn. Yes, Your Honor.

"Judge Miller: Now, of course, you realize and you know that if it should be necessary for the court to take any disciplinary action against you on the basis of this evidence, that that would have to be made public?

"Mr. Osborn: Yes, I do. Now —

"Judge Miller: In other words, this proceeding would have to be released and filed in the Clerk's office?

"Mr. Osborn: I fully realize that. Now, this is not really perhaps my place to mention this, but someone should say it, and the reason that I make this statement is that I want to say this, that the release of it may gravely jeopardize not only the rights of Hoffa, but it may jeopardize the rights of the government. I do not



*Gov't. Exhibits 13, 14 & 15*

know. The release of it or the deferral of the release of it cannot, Your Honor, jeopardize me. It could only work to the favor of my children and my wife. And I would be entirely agreeable to abide by whatever the judgment of the court was without release pending whatever Your Honor took into account as the equities of others who might enter into it.

"For the children, why, it would mean perhaps they  
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could finish a semester or maybe the year in school provided I could simply abide by whatever order was entered and well —

"Judge Miller: Of course, I will have to weigh everything, but if action is taken, I don't know, well, the court has a responsibility to consider.

"Mr. Osborn: Yes, Your Honor.

"Judge Miller: And, of course, the overriding consideration in this matter, your personal rights are involved and you are to be protected and your personal and professional rights and I respect those rights and want to give them every consideration, but at the same time, this court must realize that the dominant consideration must be the protection of the best interests of the court as an institution of government as I said in the Hoffa trial.

"Mr. Osborn: Certainly.

"Judge Miller: Well, I think that is all I have.

"(Thereupon, at 6:25 p.m., November 19, 1963, at Nashville, Tennessee, in Chambers of Judge William E. Miller, the hearing was concluded.)"

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*Gov't. Exhibits 13, 14 & 15*

**THE GOVERNMENT—RESTS ITS CASE  
IN CHIEF**

**THE CLERK:** Let the Court come to order.

**MR. HOOKER:** If Your Honor please, that's the Government's case in chief.

**THE COURT:** Do you have a motion at this time?

**MR. NORMAN:** Yes, sir.

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**MOTION FOR JUDGMENT OF ACQUITTAL**

The trial of the case was resumed at nine o'clock A. M., May 28, 1964, pursuant to adjournment, when and where proceedings were had and evidence was introduced, as follows:

(The following occurred out of the presence and hearing of the jury:)

**MR. NORMAN:** May it please the Court, at the conclusion of the introduction of proof on behalf of the Government, comes the defendant, Z. T. Osborn, Jr., and moves the Court for a judgment of dismissal in this cause for the reason that the Government has introduced no competent, material proof which would support and/or justify a jury verdict of guilty on any offense charged in either count of the indictment in this cause, and for the reason that the Government's proof shows conclusively that any actions of the defendant in this cause proven by the Government were in connection, not with any offense or violation of the law, but with regard to a pretended offense originated, designed, prepared, mechanized, instituted and continued by agents of the United

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States Government, and for the reason that any connection or association with or participation in said pre-

*Testimony of Z. T. Osborn, Jr.*

tended offense, or offenses, by the defendant was the result of deliberate, premediated and detailed fashioned entrapment on the part of the agents of the United States Government.

**THE COURT:** Is that your motion, Mr. Norman?

**MR. NORMAN:** Yes, sir.

**THE COURT:** The motion is overruled.

**DEFENDANT'S PROOF**

Thereupon, the Defendant, in support of the issues on his part, introduced evidence, as follows:  
the next witness, having been first duly sworn, testified as follows:

**TESTIMONY OF Z. T. OSBORN**

**DIRECT EXAMINATION**

**By MR. NORMAN:**

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**MR. NORMAN:** Shall we proceed, Your Honor?

**Q. Tommy, will you please state your full name into the record?**

**A. Zeno Thomas Osborn, Jr.**

**Q. And how old are you?**

**A. I am forty-five.**

**Q. And where do you live?**

**A. I live at 4001 Wayland Drive.**

**Q. That is here in Davidson County?**

**A. Nashville, Tennessee.**

**Q. How long have you lived here in Davidson County?**

**A. We moved to Davidson County in June of 1937.**

**Q. Where were you raised, Tommy?**

*Testimony of Z. T. Osborn, Jr.*

A. Well, we moved up here, Mr. Norman, from Giles County, Tennessee. I was raised in many different places. My father is a preacher and ———

Q. Oh, I see.

A. (Continuing) ——— and home missions, and so we moved periodically from Kentucky to Arkansas, to Tennessee, to little places.

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Q. Where did you go to school, Tommy?

A. I went to high school in Morganfield, Kentucky. I spent a year at Center College in Danville, Kentucky, trying to work my way through, and abandoned that. And then ——— I believe it would have been in ——— let's see ——— the winter of 1936 or '7, my father saw an advertisement in a Nashville paper about a night law school here, and ———

Q. Is that the YMCA law school?

A. Yes, sir. And so he moved us to Nashville.

Q. And did you go to the YMCA night law school?

A. Yes, sir, I did.

Q. Are you married, Tommy?

A. Yes, sir, I am.

Q. And what does your family consist of?

A. My wife and three little girls.

Q. They are the ones who have been in the courtroom?

A. One of them has been in. The others are taking their final exams.

Q. Well, you graduated from the law school, and did you start practicing here?

A. Yes, sir, I graduated from law school in June of 1940. But back in those days, Mr. Norman, on a proper certification, you could take the bar exams a little early ———

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*Testimony of Z. T. Osborn, Jr.*

Q. You took it early before you got out of school and passed it?

A. Yes, and commenced the law practice with an office in Old Rickory at the end of March, 1940.

Q. 1940. So have you practiced up until this trouble here in Davidson County?

A. With the exception of the years that I spent in military service.

Q. What branch of military service were you in, Tommy?

A. Originally cavalry at Fort Riley, Kansas. And from there to an officers' candidate school. And then following that to a training camp. Camp Walters, near Mineral Wells, Texas.

Q. And then what rank did you finally attain?

A. I was a first lieutenant on discharge.

Q. In what?

A. Unassigned. It is Army United States. I was assigned at the time as a military training officer, but I was not assigned to a branch.

Q. You went to different \_\_\_\_\_?

A. I could have been switched — cavalry —

Q. I see.

A. (Continuing) — any of the services.

Q. Now, then, after you started to practicing law here

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in 1940, did you continue the private practice?

A. After returning from military service, I was told by a friend of mine that he was going to leave his position as an assistant United States Attorney.

Q. And did you come down here, I believe?

A. Yes.

Q. Senator McKellar \_\_\_\_\_

A. I received an appointment as assistant United States

*Testimony of Z. T. Osborn, Jr.*

Attorney under Major Horace Frierson, commencing in September, 1944.

Q. How long were you serving in that capacity?

A. Two years.

Q. Then you resigned to come back to private practice, did you not?

A. Yes, I did, Mr. George Armistead, Dick Lansden, Bill Waller, that law firm.

Q. Did you go with that law firm?

A. I did.

Q. And how long did you continue there, Tommy?

A. I practiced with that law firm for five years.

Q. Did you leave that law firm?

A. Yes, sir. That was then in 1951, and Mayor West — Ben West was elected over Mayor Cummings. And he asked me to organize and head the City legal department. I was City Attorney then for two years.

Q. How long did you stay there?

A. For two years.

Q. Then did you resign that to go back into private practice?

A. Yes, sir.

Q. And was until this matter came —?

A. And was until this matter came.

Q. Tommy, have you ever been in any trouble, arrested or indicted on any trouble in your life?

A. I have not.

Q. When did you get in the Hoffa case? You were of counsel in the Hoffa case, were you not?

A. Yes.

Q. Had you ever known Hoffa or anybody connected with him prior to your employment in it?

A. No. In August of 1962 —

Q. August of 1962?

*Testimony of Z. T. Osborn, Jr.*

A. Yes. I had a telephone call from — well, from Mr. Jack Norman, saying that he had been offered an employment that he could not fit into his schedule and that he was sending a gentleman to see me. And I said, "Well, what is it about?"

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He said, "It is to see whether you would represent James R. Hoffa."

And you sent to me Mr. James Haggarty, Sr., of Detroit.

Q. He was general counsel for him?

A. Yes, sir.

Q. I will ask you whether or not he was in my office at the time and when I made that decision and recommended you he came directly across the street to your office?

A. Yes, sir, he was there within two minutes after you told me.

Q. So, if there was anything to this, I really got you into it, then?

A. Well, I appreciated it at the time.

Q. Well, you became a lawyer in that case, did you not?

A. Yes, I did.

Q. How many lawyers were there, Tommy, altogether in that case?

A. There were four of us at the counsel table. There were I think the record would show as high as fifteen or sixteen at a time.

Q. Had you known any of them prior to the time I sent the gentleman over and recommended you in this case?

A. No, sir, I hadn't known him, prior to that time.

Q. Ever met any of them?

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A. No.

Q. Hoffa or anybody connected with him, in any way, shape, form or fashion?

*Testimony of Z. T. Osborn, Jr.*

A. I hadn't met anyone, nor even knew him.

Q. All right. From that time on, you were the local counsel in that case, were you not?

A. Yes, I was. Yes, sir.

Q. Now, then, you participated, according to the record here, in the trial of the first case, which is identified and which we speak of generally and the record speaks of as the Test Fleet case, is that correct?

A. Yes, sir.

Q. That case was tried here in this division of the United States District Court?

A. Yes, sir. It commenced the 22nd day of October and ended the 23rd day of December, 1962.

Q. Now, Tommy, in preparation for the trial of that case, did you, together with other lawyers, have occasion to do the usual and run a background on the prospective jurors that might be called in that case?

A. Yes, I did.

Q. I want you to explain to the jury what that was, what it consists of, and what was done with respect to it.

A. Yes, sir. No ——— may I get the briefcase?

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Q. You may refer to any of your notes.

A. Over on my desk.

MR. NORMAN: Wait a minute. Let him — until he gets it.

A. I left one folder over there I want to have.

MR. NORMAN: Mr. Marshal, would you pull over that chair, if you are not going to use it, right behind there, so he can put that over here.

A. It is all right.

MR. NORMAN: I am afraid it might be too bulky up there.

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*Testimony of Z. T. Osborn, Jr.*

A. The investigation was a two-fold affair, Mr. Norman, at that phase.

We had contended, and, of course, have continued to contend, that the method of selection of juries in our District is illegal; that it does not produce a fair cross-section of the community. Not that it doesn't produce good people, but that the method itself is in violation of the statutes.

Q. Had you done considerable research on that legal point?

A. Yes.

So the investigation was for two purposes: First, in order to be able ultimately to demonstrate that a fair cross-section had not been presented to us; and then, secondly this: Mr. Hoffa had been subject for years to a very bad press, and to see whether or not we were being given people — being presented people for jury service that would be fair. There were two purposes of that investigation.

Q. The first one was a legal one, in order to brief and support the attack on the legal method used in this district?

A. Yes, sir.

Q. The second to get information —

A. About jurors.

Q. — to avoid prejudice?

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A. Right.

Q. All right. Go ahead.

A. As has been explained by one of the witnesses for the government, we wanted to know whether some religious groups were being excluded from jury service, whether some racial groups were being excluded, whether some economic groups were being excluded from jury service by reason of the system.

*Testimony of Z. T. Osborn, Jr.*

And then we also wanted to know, to find out whether the people, or certain people on the jury would give us a fair trial, for Mr. Hoffa.

That was the two-fold purpose.

Q. Is that the usual and common practice of lawyers trying cases of magnitude in this and other districts, Mr. Osborn? Is there anything extraordinary, or different about that?

A. No. The ordinary attorney's investigation in an ordinary case, would only try to determine prejudice.

Q. Not as elaborate?

A. But we were making, as I say, this challenge to the system, and thus we were interested in matters that you might not go into if it were an ordinary case.

Q. With that in mind. what was done? What was the mechanics of it?

A. Well, I had read, after being employed, Mr. Kennedy's book, "The Enemy Within," and a great deal of that book is devoted to his enmity for, and feeling against Mr. Hoffa, and also his theory that Mr. Hoffa, if put to trial, would try to tamper with a jury.

So the mechanics went once again a little bit beyond what you would have done in the ordinary case.

I assembled a crew of investigators, and then took certain precautions —

Q. Now, first, who did you assemble?

A. I assembled —

Q. And how did you do it?

A. I assembled, over the period of time, and for that investigation, basically two teams, what you would call a country team and a city team. And one team was headed up by Mr. Fred Ramsey, and the other was headed up by

*Testimony of Z. T. Osborn, Jr.*

**Mr. John Anderson, a former Clerk of the United States District Court.**

I had originally undertaken to find a young attorney who had just left the United States Attorney's office to take complete charge of that. After he had looked the list over four or five days he returned it to me and rejected the employment. And I then had to, myself, assemble people for the investigation.

**Q. All right. Now, these were the heads of them. Who else were on each one of those groups? Tell us who was on P. 709**

**each group.**

**A. Well, the team of Anderson's was John Anderson and John Polk, a former Federal Agent; and the team of Ramsey was really Ramsey and three men selected by him who were John Tolliver, Bob Vick and Doris Brent, a constable.**

**Q. Who employed Vick to begin with?**

**A. Mr. Ramsey employed Vick to begin with.**

**Q. Did I ask you about both teams?**

**A. Yes.**

**Q. All right. Go right ahead from there.**

**A. Well, what happened, after two days of it John Anderson was absolutely bored to death. I had put them under severe restrictions. I had instructed them to limit their investigation to public officials.**

**Q. Did you give them written or oral instructions, or what?**

**A. I had given them both, written and oral instructions.**

**Q. Do you have a copy of the written instructions you gave them there?**

**A. Yes, I do.**

**Q. Did this go to all of them including Mr. Vick?**

**A. Yes, to every one of them.**

*Testimony of Z. T. Osborn, Jr.*

Q. Would you read that, please?

A. "Letter to Mr. John O. Anderson, is dated October 17, 1962. Re United States versus Hoffa. Dear John: We ap-

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preciate your willingness to take part in a ninvestigation of the jury summoned for duty October 22. It is not going to be easy to get a fair jury in this case andwe need all the information we can get about each juror. You must be extraordinarily careful to observe the proprieties, as I have explained. It is perfectly legal and ethical to investigate the jury, but any worry, bother, harrassment, or intimidation of the jury is unlawful. Avoid any personal contact with the jurors. If at all possible, avoid even letting a juror know that he is being investigated. After ——"

Q. Now, without going any further —— the government can see that, if they wish, you have it here?

A. I think they have copies of all of my letters.

Q. You have already given them copies?

A. Well, they were turned in during the Grand Jury investigation.

Q. They have had them all this time?

A. Yes, sir.

Q. They have had them in their file when they were putting in their proof and they have had it all the time?

A. Yes, they have, Mr. Norman.

Q. Did that go out to all of them?

A. Yes. I made this requirement, for example, in an almost identical letter to Mr. Fred Ramsey who was heading up a team and gathering an investigation. I made this

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requirement of him.



*Testimony of Z. T. Osborn, Jr.*

"I furnish you with several copies of this letter and you should ask every person assisting you in the investigation to acknowledge —"

Q. Now, this is to the man that employed Vick?

A. Yes. "... to acknowledge receipt of a copy of this letter and see to it that he has read and understands this letter."

In addition, as I would meet these people, I gave them these instructions orally, and I gave it to them in very stern terms, in order that they never would be subjected to the embarrassment of some charge.

Now, I also did this — although I abandoned this as far as my country team is concerned, when John Anderson quit after two days —: For their own protection and for my protection I insisted that every interview that they made, that they make in pairs; that they not go alone and leave themselves open to someone saying something. And I also insisted that they keep a strict diary of every place that they went, the persons they talked to, warning them of this, that there would undoubtedly be an investigation if we should win the case for Mr. Hoffa. And that anything that they did would be subjected to the most searching scrutiny.

And I am happy to say that not a single one of the investigators that I employed was ever subjected to any

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charge, or indictment, or anything like that.

Q. Mr. Osborn, now, how long did those — First, I want to ask you: Did you give them a form showing the areas of investigation that were desired and for them to fill in to send back to the office?

A. With Mr. Polk and Mr. Anderson I did not. They were more knowledgeable, both of them had been in the

*Testimony of Z. T. Osborn, Jr.*

government service, they knew what would be proper, and so on.

Mr. Ramsey was a deputy sheriff, and not necessarily too knowledgeable. So in his case I dictated —

Q. That is the one who employed Vick now you are talking about, Ramsey?

A. Yes. I dictated and did a little memorandum on what we wanted, such as married or single, children, and things like that.

Q. Well, anyway, did they use those forms?

A. Yes, they did.

Q. And all the work that the men employed by Ramsey, including Vick, did, did they turn in on those forms to you?

A. Well, I gave the mabout ten copies, let's say, to start them off so they would know. They used up all those forms, and then just put the information on a sheet. They didn't in every case turn in the information on a completed form, that wasn't necessary.

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Q. When did that begin, Tommy?

A. Well, my letter to Mr. Ramsey is dated October 16, 1962. He probably actually commenced work a day or two earlier than that, because when Mr. James Tuck came back and said he was not going to do it, it left me short of time, because we had no more than a week before we were to commence the trial. But I probably started him to work and then tended to these things as they became necessary, following up oral instructions that were given at the time.

Q. How long did that continue now?

A. Well, that continued until the commencement of the trial on the 22nd. Now, thereafter, certain investigations were made, but not of this general type. There were, during the course of the trial, as was indicated by things that were happening and coming out, and as had been indicated

*Testimony of Z. T. Osborn, Jr.*

by the very people who were seated, there were from time to time separate individual investigations.

Q. Now, when was that trial concluded?

A. On the 23rd day of December 1962.

Q. Now, by that time, was Vick through? Was he doing any work for you at that time?

A. He was through.

Q. But during that time Vick worked in this investigation for you?

A. Yes, he would know all about anybody he talked to, or anything he had to do with it during that time, would he not?

A. Absolutely.

Q. All right. When was the next investigation begun that Vick had anything to do with?

A. A Grand Jury was impaneled, and we originally —

Q. Were you all making the same motion as to the legal composition of the Grand Jury as you had as to the petit jurors?

A. He did, I think, one thing for me while the Grand Jury was in session, and then I didn't actually spend the money on the detailed time-consuming investigation for the motion until somebody got indicted, but after the indictment was returned, I once again had Polk and Ramsey pull in their people and do this breakdown on —

Q. Of the Grand Jurors that had returned that indictment, and how it was organized?

A. Yes. Race, religion, and so on, financial status.

Q. Now, then, did Ramsey employ Vick in that case to do that work, too?

A. Ramsey brought Vick in, but Ramsey and Vick had been doing this since the first investigation. Both of them had been telling me of being subjected to harrassment and questioning, and, "We are going to have to quit, Tommy,

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on this case, or we are going to get fired," and that sort of thing.

Q. Do you know why Vick started telling you that he was going to quit? Do you know what he was talking about?

A. Well —

Q. Do you know now?

A. I do now.

Q. Did you know then, or have any idea what it was?

A. No, I did not. At the time I said to Ramsey, I said, "Well, you ought not to take part in it, if you are going to be subjected to that sort of pressure, you shouldn't." So Mr. Ramsey took no part in the Grand Jury investigation. I left it up to Vick. I said, "Now you want to work, and you can do this work," and Vick did take part in the Grand Jury investigation.

Q. Now, the first case had terminated in December of '62?

A. Yes.

Q. And about these conversations that you are talking about now, Vick talking about you ought to quit, the stuff that you have just talked about there, was that after Christmas, after that, when the Grand Jury came in?

A. Yes.

Q. About what time would that have been in '63?

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How early in '63?

A. Well, he commenced shortly after the Grand Jury had been convened, which took place, I believe on January 15.

Q. You heard yesterday, I got these Department of Justice reports about Vick starting to report as early as



*Testimony of Z. T. Osborn, Jr.*

February in '63. Would that have been just about the time he was advising you that you ought to quit?

A. That was just about the time that both he and Ramsey were tellin gme that they were being harrassed, and humiliated, and their employment jeopardized. That's when they commnced this.

Q. Of course, it is not necessary for me, I don't reckon, to ask you, did you know at that time that time that he was reporting to the Department of Justice?

A. No, I did not. I simply had sympathy for him in the position that he was in, and —

Q. Well, regardless of that, did he go ahead and participate in that investigation?

A. Yes, he did.

Q. Clear on through?

A. Yes, he did, as the checks that have been exhibited — he continued —

Q. For his work, and as a matter of fact, for all the rest of them, was there any hiding about the payment? Was it

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done by a check of the whole law firm, out openly?

A. Yes.

Q. And they brought in these checks for him. Are the checks for all the rest of them on record just the same way?

A. For every person. You have to do that in order to keep a record of it.

Q. In this investigation has the government gotten your bank accounts and gone through all of them?

A. Every check.

Q. Everything that you had?

A. Yes.

Q. They could have brought all the rest of them in here for the others, just like for Vick, could they not?

A. Yes, sir.

*Testimony of Z. T. Osborn, Jr.*

Q. Did you make any pretense to hide your payment of them, in any way, shape, form or fashion?

A. No. My only problem was being sure that my secretary kept up with the expense that we encountered, so I could be reimbursed for it, and so I could collect the money back, you see, so I tried to keep a record of it.

Q. Now, Mr. Osborn, when did he finish that phase of the work, call it the second phase, he and the rest of them?

A. Judge Gray gave us until, let's say a date in late May or early June, you know, in which to file these motions, P. 718

which we had described to him. That work would have been completed probably, the way I have always done everything, get it done the last minute, it would probably have been completed just about the time that we made our motions before Judge Gray, which were filed in June of 1963.

Q. June of 1963?

A. Yes, sir.

Q. So therefore from then on, after the completion, he was not doing any work for you at all?

A. He did one small assignment during the summer.

Q. Do you remember what that was?

A. Yes. It was — he came to me and gave me some information about Don Vestal. Our indications had been that Mr. Vestal was probably a prime mover —

Q. Vick came to you and gave you this?

A. Yes. And the indictment —

Q. When was this he came to you and gave you that information?

A. Well, if I could see the government's exhibits on the checks, I could tell you when he completed the investigation.

Q. Well, was it after February? We know now he started reporting to the government in February 1963.

A. Yes, long after February.

*Testimony of Z. T. Osborn, Jr.*

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Q. What did he come to you and tell you about Don Vestal?

A. Well, he told me that if he could be employed, and give him a few days in which to work it up, he would probably be able to develop that Vestal had assisted the United States in getting the indictment returned, and also that he would be able to develop material which would, if Vestal were called as a witness, would have served to impeach him.

Q. You didn't know then that he was really friendly with Vestal and not an enemy at all, as he was proposing to you?

A. No, no, I did not.

Q. All right. Now, then, Mr. Osborn, the next time that Vick came in to the picture, so far as you are concerned, is what I call the third area, and that's the area that's involved here in this case, is it not?

A. Yes, sir.

Q. Now, before we get into that I want to stop and ask you this; Now he had participated indirectly as an employee of you, because Mr. Ramsey employed him for you?

A. Yes.

Q. So you make no question about that?

A. That is right.

Q. And he had done all this work on the first trial, and

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on the Grand Jury?

A. Yes, sir.

Q. Now, after all this investigation that's been made of you, have you ever heard of anything that Mr. Vick or the Government or any of them, through any investigation of the Department of Justice, has come up to show that there was anything wrong about those investigations?

*Testimony of Z. T. Osborn, Jr.*

A. No, sir. Every result of it, Mr. Norman, has been filed in open court and argued from here to the United States Supreme Court.

Q. Well, outside of that trial, have they had every one of your records and every one of his to check them and see what your activities were?

A. Yes, sir.

Q. In every way, shape, form and fashion?

A. Yes, sir.

Q. Now, then, when did you next hear from Vick?

A. Well, after the report of Vestal, and at that time, this had occurred: My investigators were being pulled back in for questioning. Fred Ramsey, for example, was suddenly, and I suppose the only man who in 1963 had his 1962 income tax investigated. And both Vick and Ramsey were continuing to tell me of what amounted to harrassment. So at that time I came to this agreement, I thought, with them, that I would not —

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Q. Did you try to get somebody else?

A. Yes, that I would not call on them any more; they had been subjected to enough trouble, and it would be unfair to ask them to help me.

Q. So when you started out preparing the next time for the third area, did you abandon them completely and employ somebody else?

A. Yes, I did.

Q. Who did you employ for this third area?

A. Well, the city team on this next time, I got — well, Chief Frank W. Muller had retired —

Q. That's the Chief of Police?

A. The Chief of Police had retired. And he and —

Q. At that time were you trying to get the most reputable people you could get for it?



*Testimony of Z. T. Osborn, Jr.*

A. Certainly.

Q. All right. Then who did you get?

A. Well, I got Chief Muller, and Lieutenant Neely, and Sergeant Moore.

Q. Lieutenant Neely had been a lieutenant — Muller had been Chief, Neely had been a lieutenant?

A. Yes, and they had retired.

Q. And Mr. Moore had been what?

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A. I believe he was one of the senior sergeants in the department when he retired.

Q. That was the city team, when you decided to just separate from Ramsey and them on account of the involvement, altogether?

A. That is right.

Q. Who else did you get for the others?

A. I return again to John Polk, who had, as I say, people like former sheriffs and so on scattered around in the country, C. H. Himes, James Cisco, Leo Goodwin.

Q. I am more interested in the city part here.

A. Yes, sir.

Q. Now, then, when you started out on this investigation then, what I call the third area, Vick was not in it, he was out, and you were — you had Muller, Neely, Moore and some others here?

A. That is right.

Q. Now, by that time had Vick become a policeman, or do you know?

A. Oh, yes, he had been transferred over months before when Metropolitan Government came into effect.

Q. That's when he went in as a policeman?

A. From being a deputy sheriff to what amounts to a policeman.

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*Testimony of Z. T. Osborn, Jr.*

Q. That's one of the things about Metropolitan government, when it went in it took folks like Vick and made him a policeman, gave them police authority in the City of Nashville, is that right?

A. Yes, and he was one of them.

Q. Now, then, what kind of instructions were given Muller, Neely and these fellows who were to work in this third area, after you had gotten rid of Vick?

A. They were given exactly the same instructions as had been given before, to absolutely avoid any possible —

Q. Did you give them written instructions?

A. I did.

Q. Do you have copies of it there? Or can you get it for the government? Have they seen it, or do you know?

A. Instead of bringing a copy in, I talked with Muller two or three weeks ago, and he said he still had his copy and he would bring it when he appears as a witness.

Q. All right.

Now, then, they then began the investigation of the background of what step, for what trial, so we can get them distinguished?

A. The jury panel that was drawn by the Clerk and Jury Commissioner, let's say around the 15th to the 17th of September 1963, the same —

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Q. For the trial of the jury tampering case, is that right?

A. Well, that's speculative, whether it would have been, Mr. Norman. Here is the situation —

Q. The case was tied up in the United States Supreme Court, was it not at that time?

A. Proceedings had been stayed in it. We had a certiorari pending. It was speculative whether any of those people would ever be offered to us as jurors because we were challenging the entire array and the purpose of my

*Testimony of Z. T. Osborn, Jr.*

investigation was once again to get race, religion, employment to try to see whether we could show exclusions of people for jury service.

Q. This was for the purpose of buttressing your legal point?

A. Yes.

Q. Now then, you said that you didn't employ Mr. Vick on that; he had finished a month or so earlier. That you had employed others. How did Vick get into it?

A. Well, he continued, now from time o time to come in to talk about the harrassment that he was being subjected to, and he began to —

Q. Now, telling you that he was being harrassed by who?

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A. By the United States government.

Q. Over what month was he telling you that he was being harrassed — coming into your office and telling you that he was being harrassed by the United States Government?

A. He was telling me that over the time the Grand Jury commenced, January 15, 1963, right up to the day, Mr. Norman, that I gave him some employment on October 28, 1963.

Q. In October. And you didn't know that all that time that he was telling you, coming to your office and telling you that he was being harrassed by the government, that since February, on the contrary, he had been reporting to the government about you?

A. I had no knowledge of that.

Q. All right. What did he say to you then?

A. Well, he was also constantly saying this: "That as soon as that trial is over, and they won't make a stink about it, the government will get me fired, I am going to lose my job. What am I going to do?"

Now on October 28, and I am taking his word for it, from one of his affidavits, I would say it probably was October

*Testimony of Z. T. Osborn, Jr.*

28 — that accords with my own memory — On October 28 he came to my office and —

Q. Now, he had not been employed since back — how far back?

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A. Three months.

Q. Three months?

A. Two months, something like that. And it had been agreed that I shouldn't ask him to do any more, it was too much of a sacrifice for him to —

Q. He was telling you he was harrassed and you were telling him it was best for hm not to if what he was telling you was the truth?

A. That's exactly right.

Q. All right.

A. He came to my office on October 28, and said, after he had asked the secretary to see me, or something like that, he said, "Tommy, I am in terrible financial shape." He said, "My bills have mounted up, and they are going to fire me just as soon as the case is over because I helped you in the case. Don't you have any sort of work that I could do?"

Q. Now, did you, at that time — I have asked you up until then — at that time, when he was there putting up that story to you, did you know he had been reporting to the government, to the FBI since February, and to Sheridan since May or June? When he was asking you that? Did you know anything about that?

A. I had no idea of that.

Q. All right.

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Now, I had a talk with him then. I reminded him that he had gotten into this situation over being of help to me, that if I did give him employment it would be in violation



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of a word that he told me. He had told me that he had promised Walter Sheridan that if Mr. Sheridan would let him alone, he would never work for me again. He had reported that to me.

I said, "Well, you will be in violation of your word with Mr. Sheridan, and you should not do any employment."

But he begged about it, and it then occurred to me this: That although we would probably, or quite possibly never be faced with the jury that was under attack, that maybe by the time it got back from the Supreme Court there would be a new jury drawn, still in order to preserve our legal point, I should complete the analysis of that 250-member panel on race, employment and religion, and whether union people were being excluded.

So I said to him, "Well, Bob, I have one thing, one piece of work that I can give you to do that will help you along that can't possibly get you involved." I said, "I've already got other people that are checking on those jurors that would go in to Judge Gray's Court," from which our jury would come, "but I haven't paid any attention to the 75

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jurors that would be serving in Judge Miller's court. But in order to complete an analysis I have to show the whole 250. I couldn't just stop with 175."

I said to him, "You can do this work, and no one can possibly criticize you about it because it's with reference to a jury that's not even remotely connected with anything to do with Mr. Hoffa's case."

Q. Let me stop you right there. You say that this happened — I believe you said you took his word on October 28?

A. That fits my memory about it.

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Q. Is that the first time he came in begging you to re-employ him? Had he been in on occasions before that and you hadn't done it, just prior to that?

A. He had been in on occasions before that, but each time I had been able to remind him of the trouble, and we had continued to agree that he wouldn't be employed.

Now, I said to him, "Of course we are on certiorari to the Supreme Court, but one of these days, if we lose this certiorari, then within a matter of a week or ten days I will have to have this analysis, so I will give you the bottom 75 names and you can check them to see what they do."

Q. And what were the bottom 75 names?

A. So I tore him off the bottom sheet of the 3-page jury list.

Q. Which would have been in the other court?

A. Yes. And gave that to him. And he turned to go. This is what occurred. He said, "Tommy, I have a cousin on Judge Gray's jury."

Q. Now, he said that was later. Did that happen when you gave him that list?

A. The minute that I gave him the list.

Q. I said, "Well, I didn't know that."

And he said, "Why, I told John Polk to tell you about it. Didn't he tell you?"

And I said, "Well, Bob, if he had told me —"

Q. Well, had he told you?

A. I don't think Mr. Polk ever told me about it. I was not with these investigators. I was not seeking for any people who had personal contact with them. I don't think Mr. Polk ever told me. But if he did tell me, I had paid no attention to it. I told him no, he hadn't told me.

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He said, "This cousin and I are close. I could talk with him if you wanted me to."

And I said to him, "Now, Bob, you have been in trouble enough. I don't want you to do that. You stick to these 75 names and let that be the end of it."

Q. Now that happened according —

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A. October 28.

Q. Just as soon as you gave him that list?

A. Yes, sir.

Q. Had he ever mentioned that until you finally employed him, until he was sure you had an agreement of employment?

A. Well, he had mentioned this, Mr. Norman, to others that he had tried to send to me, but that was his first mention to me.

Q. You have learned that since?

A. Yes.

Q. You didn't know that before? I am talking about what you knew at that time.

A. Up to that time I didn't know that.

Q. Did you know at that time that he had been trying to send others to you to talk to you?

A. No, I did not.

Q. We will get to that later.

A. Yes.

Q. Did you know at that time, Mr. Osborn, that he had a firm arrangement with the government that he was to try to get employed by you in order to get information? You had no — certainly no knowledge of anything like that?

A. No. At that time I really was very sympathetic with him, the loss of his job would have meant a lot to him, and so on. I had no — nothing except the feeling that, "Here

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is a man that has borne the heat of the day," and that I should help if I could. That was my only feeling about it.

Q. All right. When was the next you heard from him?

A. Well, he came back probably at a very short time later, Mr. Norman. I would say a day later, now. Or this may be part of that same day. In other words, after I had told him no, that I didn't want him to talk with his cousin, he went out the door. But now there was another meeting at a point so close in time that it was either the next day or perhaps later that same afternoon. He came on that time, on this second meeting, he came, and came into my office, and told me that he wanted to talk with me about this cousin, and then said, "I also know two other people on that jury."

I said, "All right. What about them?"

He said —

Q. Now, so that I can understand, and maybe the jury, if they have the same thought about it that I do: Is this one of the times that you later learned that he had a thing on his back and it didn't work?

A. No, no.

Q. All right. Tell us when you come to them, so —

A. Yes.

Q. All right.

A. Then we will, of course, be able to show how he has

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omitted certain conversations and telescoped one conversation.

He said he wanted to talk with me. I said, "Well, what about it?"

He went like this. (Illustrating) Up at my office ceiling.

Q. You mean —



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A. Indicating that the walls have ears.

Q. You mean he indicated he thought somebody might be listening to you?

A. Yes. I was at the time suspicious, or firmly convinced that my telephone had been tapped, and that they probably had listening devices. I now know that what they had in Mr. Hoffa's trial, for example, they had a man named Barton who was stationed with us and reporting. They also had my little friend Vick, who was reporting. But at that time I thought nothing about someone saying, "I don't want to talk where the conversation might be heard."

I said, "Well, you can talk here."

But he said, "No, step outside with me."

So I stepped outside with him. We walked to the corner of the building.

He said, "Tommy, this cousin and I are very close. I could talk with him."

I said, "Bob, I don't want you to talk with him."

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I said, "You will get him in trouble. You will get yourself in trouble. Don't talk with him."

He said, "He's a member of the union."

I said, "Well, if he is a member of the union, what good would it do to talk to him? The government would know that and they will challenge him."

He said, "Well, he is in the CWA, and they have had a fight with the Teamsters and the government might take him."

I said, "They won't take him, and irrespective of that, in any event, I do not want you to talk to him."

And also I said this, I said, "You would have no excuse for talking with him. You don't have that part of the list even with his name on it. You couldn't even say that you were investigating him."

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He said —

Q. And he didn't, did he?

A. No, he didn't. He could have had no excuse for talking to him.

He said, "Well, if I ran into him by accident, would there be anything wrong with that?"

And I said to him, "Now so long as it really was by accident —"

Q. Right there let me interrupt you and ask you: Did you know that he had already reported to Sheridan and P. 734

the department that he was going to try to get employed with you and had told them about this cousin being on the jury?

A. I now know that he had.

Q. You didn't know it then?

A. No.

Q. All right.

A. And of course we now know, Mr. Norman, that he reported on the 28th of October that he had been employed, but he gave them no other reports until the 7th of November, eleven days later.

Q. All right. Go ahead.

A. He omitted these things that were occurring in the meantime.

Now, I said this. I would say about three or four days later he came back to my office. He said, "Well, I ran into my cousin."

I said, "Well, what did he say?"

He said, "Tippens —" Tippens was a juror who had been excused at the former trial, Mr. Hoffa's former trial, after he had reported that a neighbor had come to him and said, "I have heard you can make some easy money in the case, \$10,000." And that had been given wide publicity.

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He said, "I told him, said hello to him, and the case came up and he said, 'Well, I will tell you this: this Tippens  
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was a fool. If it had been me, I would have taken the \$10,000.' "

That's what Vick said to me.

Q. I understand.

A. About his pretended meetings with his cousin.

Now at that point I went into this sort of a discussion with Bob Vick. I said to him, "Well, that business of \$10,000, and the way that that is reported, and the way the government insists on it, has always made me feel that there is a very great probability that Lawrence Medlin is innocent and is simply telling the truth when he says that he had simply overheard some talk about this neighbor of his, and was reporting the talk to him."

Q. Why did you say that? Why did you believe that?

A. Well, I explained to Vick why I believed that. And I said to Vick, I said, "In the first place, who in their right mind now would walk up to somebody and say, 'I will give you \$10,000 to hang the jury.'? "

I said, "Any person who had that seriously in mind would in the first place, after a discussion of the case, see whether the other person would want to solicit a bribe, and if it was \$10,000, you wouldn't just walk in with \$10,000 cash, but instead you would — any sensible jury briber would be paying half down and half later."

Now he — you see, he said, "Well, he brought it up

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to me. I didn't bring up the case to him."

See, he was then beginning to feed back to me my words in these other conversations.

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Now, you said, and it is sworn here, that he saw me on the 7th, and had a conversation with me.

Q. What day would the 7th have been, Tommy?

A. Well, that would have been ten or 11 days after he had —

Q. Gotten employed?

A. — been employed.

He said that he saw me on the 7th, and perhaps he did. In his affidavit he does actually report a conversation that I had with him, which went like this:

He said that he was confident that his cousin would want to make some sort of a deal, and I went over again with him the proposition that we didn't know whether his cousin would be on the jury; that he should not get involved. And he said, well, if he did want to make a deal, what would be done? I said, "Well, now, in the first place don't you ever bring up the subject to him of asking him to do anything." I said, "Don't do that. If it is brought up you had better be certain that you did not go up there and approach him."

"I said, "Now, another thing, money and a person's comprehension of it is a personal thing." I said to him,

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"One of the charges that are pending here in Nashville, a man named Buster Bell is accused of having gone out to some colored man and offered him \$30,000 to go and bribe another colored man." I said, "Now, I am just putting myself in the colored man's place. If somebody came in and offered me \$30,000 I would be sure that they weren't trying to help me, they were trying to get me in trouble."

I said, "If he does bring up the subject, if he does solicit a bribe, don't you come up with him on some figure, or something like that. If he wants to do that, then you let him name his figure, because he would probably say a



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thousand dollars and then you could say, well, you would give him two, one now and one then."

I said, "Now, that's the only sensible way to do it."

So he left, and he said — There was other conversation on that day, but this was a part of it, and really about as brief as I am talking to give it to you here.

He got up to go, and he said, "Well, I am going to see my cousin." And I said, "Don't go see your cousin. You are rushing me in this thing." And — But at that same time, Mr. Norman, by reason of these other things, and the persuasion, as you can see, he had me then within the net

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Q. Did you know that at that time that he had not only been reporting since February, but that he had talked to Mr. Sheridan in the meantime about this particular Juror Elliott and filed a report about Elliott, as well as another man by the name of Corn? Did you know anything about that, Mr. Osborn?

A. I didn't know that, no.

Q. This man was posing in your office as one in need, wanting to get help and get employment?

A. Yes, and making this pretense of having talked to his cousin, yes.

Q. Now, then, Mr. Osborn, after this broke, what was the first knowledge you had of it that something had happened?

A. I received a telephone call from Judge Miller's secretary. It would have been at about one o'clock on the 15th day of November.

Q. Of course, at that time you knew nothing about the fact that the Government had strapped a recorder onto his back, and sent him into your private office posing as your —?

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A. I didn't know that. But I did ——— but I did have this knowledge, which I have related to you. I was in a trial that I had for some people from Memphis that couldn't be concluded before three o'clock. They asked — Judge  
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Miller's secretary asked me come to the office, and I told her that I could be there at three o'clock. And I went back and argued my lawsuit, and then went to Judge Miller's office at three o'clock.

Q. I believe it was that night that you called me, or was it that night?

A. It was on the following day.

Q. It was on the following day?

A. Here is what occurred. After receiving the telephone call, I had this fear that, in spite of everything I had said to him, I had let the man get himself into trouble, that he had gone up and done something foolish, that he had been caught either in talking with his cousin or that his cousin had reported him.

Q. You didn't know at that time it was just a sham, a pretense, and nothing to it at all?

A. No. I didn't know that the object was ———

Q. To catch you?

A. To take me out of the lawsuit. I didn't know that.

Q. All right. And what did you do then?

A. Well, I went into Judge Miller's office, and they immediately, as is shown by the transcript ———

Q. They — who is that?

A. Judge Miller and Judge Gray. They immediately  
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questioned me as to whether or not any plan for jury tampering existed, and specifically whether any plan existed as to Juror Ralph Elliott.

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Now, to my discredit — I had only been put in that same situation once before in my life — that is, to whether I would betray a friend, you know, which I could have done and now know I should have done simply by relating these matters and avoided all of this —.

Q. Why didn't you do it, Tom?

A. Twenty years, Mr. Norman, of trying to be worthy of the other man's confidence would be a block — puts a block in your mind. You just don't say what another man has done or told you. As I said —

Q. In other words, you tried to protect him?

A. I wasn't even tempted, I am sorry to say, I wasn't even tempted to tell it all. I denied it.

Q. And that is when your trouble started?

A. And that continued to be the main principal trouble, the fact that I did that.

Q. Now, then, Mr. Osborn, I believe you say you got in touch with Mr. Denny and Mr. Lansden and myself the next day, did you not?

A. I did on the following day.

Q. What was the following day, if you remember?

A. It was Friday, November 15th. It would have been

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Saturday, November 16th.

Q. I will ask you, then, if Mr. Denney and I came down here with you, as this transcript shows, and went to Judge Gray and tried to get him to give us a copy of this tape, and he said he couldn't do it?

A. Yes.

Q. The recording of it is exactly what happened, is it not?

A. It is.

Q. As has been put in this record?

*Testimony of Z. T. Osborn, Jr.*

A. It is. I had asked the judges for information, and they had declined. After talking — after asking you for permission to talk with you, and Mr. Denney and I met with you, we thought that we might do this, that I might call Mr. Hooker and see whether he would help us to obtain at least some information as to what their charge would be based on.

I did call Mr. Hooker. And Mr. Hooker, after seven or eight hours of work on it, got us the very scant information which is set forth in that.

Q. That is, he made the arrangements for us to talk to Judge Gray?

A. Yes.

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Q. And the record shows what Judge Gray told us, but they wouldn't let us see it, would he not?

A. He went then to work on it about ten o'clock, and finally got into Gray's office, as I recollect, about five or five-twenty.

Q. That is you, Mr. Denney and myself, is it not?

A. Yes.

Q. Now, in the meantime, you were indicted, were you not, thereafter?

A. Yes, I was indicted following the disbarment.

Q. Now, from that time on, you have been disbarred?

A. Yes.

Q. From practice, have you not, and are not practicing?

Mr. Osborn, from that time on, when was the next time you heard, directly or indirectly, from Vick?

A. I say within about three weeks after the indictment I first began to get indirect word from Vick. But the 7th or 8th of January, I had —

Q. January, 1964?

A. '62.



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Q. All right, now, what was that?

A. Well, he had asked an attorney to approach me.

Q. And who was that attorney?

A. Sam Wallace.

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Q. Did Mr. Wallace come to see you? How did you find out about it?

A. At the time I found out about it, Mr. Wallace was in the hospital. His secretary made the report to me as to what had occurred. He had told her about it. And then, as soon as Mr. Wallace got out of the hospital, I talked to Mr. Wallace about it and he told me personally about it.

MR. HOOKER: Of course, if Your Honor please ———  
pardon me.

MR. NORMAN: We are not going into it.

MR. HOOKER: We object to a statement that Wallace told him Vick had him get in touch with him.

MR. NORMAN: I am not going into it. Mr. Wallace will be here.

Q. All right, when was the next time, Tommy, you heard, directly or indirectly ———?

A. I was out of the city substantially from the 18th of January until the 8th of March.

Q. Of this year?

A. Yes. In the meantime, what I had done had resulted in the transfer of Mr. Hoffa's case and his conviction. Now, I believe that Mr. Hoffa was sentenced about the 8th of March.

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In any event, although I didn't note that date at the time, and didn't note it until four or five days later, because at first I didn't realize the significance of it, but according to my best recollection ——— and the recollection I tried to have

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on March 17th — on the 10th day of March I was approached by —

MR. NORMAN: If Your Honor please, I might suggest, rather than interrupting this, we might take our recess now because this is going into a story that we wouldn't like to interrupt.

THE COURT: All right, all right. We will have a short recess at this time. Ten minutes.

Have a fifteen minute recess.

(Recess)

Q. Now, then, Mr. Osborn, when was the next you heard any from Mr. Vick, directly or indirectly?

A. I believe that — that I had been back from Chattanooga two days, and it was on the 10th day of March, and that I next heard from him — Vick.

Q. How was that?

A. He had — he has outlined in his testimony — he

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sent a boy named Harry Childress to see me.

Q. Is that your — where was that, in your office here in Nashville?

A. In my office in Nashville.

Q. Is that the same Childress that Mr. Vick said that he sent to you?

A. Yes. Yes. Now, this boy called me. He said, "I have a question that I need to have answered."

Q. This is Childress?

A. Yes.

Q. This is on the phone, now?

A. Yes. I said, "Harry, I am no longer permitted to practice law. I can't help you."

He said, "Well, I want to talk to you. You can help me. I just need information."

*Testimony of Z. T. Osborn, Jr.*

So I said, "All right."

Now, I had represented this boy's father and his family for fifteen years.

So he came to the office. And he said, "I want ——— a friend of mine out in the project is trying to locate their son."

And I said ———

Q. Up until this time ———

A. Yes.

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Q. (Continuing) ———you didn't know that Vick had sent him to see you?

A. No, no, that didn't come out until he had asked me for the information.

MR. NORMAN: Yes.

A. (Continuing) So I said, "Well, Harry, where did they disappear from?"

He said, "It was from the hospital in Washington."

I said, "Well, I can help you on that. Our Congressman, Dick Fulton, tries to be very helpful to any mother and any others trying to find a missing person. So she should simply write to Congressman Fulton."

He told me his father had died recently. I told him I had been out of the city and hadn't known it, and then expressed my sympathy.

He then said, "I am sorry about your troubles." He said, "I know this boy Vick." He said, "I saw him and played golf with him yesterday."

I said, "Well, how is he getting along?"

He says, "Well, he says he is broke."

I said, "Well, he is still on the payroll and everything, as far as I know."

"Yes," he says, "but ———"

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**MR. HOOKER:** Mr. Norman, pardon me just a minute.

**MR. NORMAN:** Yes, sir.

**MR. HOOKER:** If Your Honor please, we think this is clearly inadmissible and hearsay.

**MR. NORMAN:** If Your Honor please, Mr. Vick testified and swore under oath he sent him to see him.

**MR. HOOKER:** Now attempting to relate a conversation of a man named Childress. We think it is incompetent.

**MR. NORMAN:** Your Honor will remember that Vick testified that he sent Childress to see Mr. Osborn. That is what we are going into. We would certainly have a right, if the Government witness has said, "I sent Childress to see Mr. Osborn about a matter," that we can go into it now.

**THE COURT:** Well, you may be entitled to some latitude on that. The Court will overrule the objection.

**MR. NORMAN:** Very well.

**A. (Continuing)** Well, he then said to me that "The reason Vick is broke, some lawyers owe him money and haven't paid it."

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I said, "Well ———"

"He said that you owe him some money for an investigation that he did for you."

**Q.** Now, this is after you — he had been put a tape on his back and come into your office?

**A.** Yes.

**Q.** And you had been disbarred and indicted?

**A.** Yes, sir.

**Q.** That he sent Childress to see you about money?

**A.** Yes, sir.

**Q.** All right, go ahead.

**A.** As Vick testified on the stand, — now, I explained to Childress that I did not feel that I owed Vick one penny. I told him this. I said, "He probably didn't tell you that



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he was paid two hundred dollars shortly before he finished his work, that he then brought me a bill in which he said that he had encountered certain expenses, and since that time every person that he claimed to have paid money — they have billed me for it, and if I were to pay, Childress, it would simply be I would be paying double because he has not paid any of these people that he says.”

Q. What else did he say?

A. Well, that ended that conversation insofar as Vick P. 749,

was concerned. After he left, and really, at the time I wasn't \_\_\_\_\_

Q. You didn't connect it?

A. I didn't connect it, because of the death of the boy's father and the fact that I had represented the boy's family for so long.

On the \_\_\_\_\_ I will back up.

After he left, I realized that it was significant. Two or three days later it took to dawn on me. And from that time on, I began to keep sort of a track of it.

The next thing that I heard from him — Childress — he called me at five-forty P.M. and — on the 12th day of March, this was two days later, and at that time he said, “Now, Vick has information. It is more important \_\_\_\_\_,”

MR. HOOKER: Pardon me, Mr. Norman.

If Your Honor please, my recollection is that what Mr. Vick said about that was that he did send or permit Childress to go to see Mr. Osborn about collecting this money. There was no conversation gone into.

Now, here we have got one conversation between Mr. Osborn and Mr. Childress at his office.

And now, as I understand, this is some telephone conversation.

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And we submit that that is purely hearsay and couldn't possibly be admissible in this case.

MR. NORMAN: May it please the Court ———

THE COURT: Well, the Court overrules the objection.

Q. Go ahead.

A. He says, "Childress has information. It will help you."

Q. You mean Childress says Vick has information——?

A. Yes, "Vick has information that will help you, and also help Mr. Hoffa."

And he told me that he would call me, and wanted to meet with me.

And I had to be out of town the following week. Nothing occurred until I returned. I was away for a week. And then I received a telephone call from Mr. Childress and he requested that I come to the Gerst House ———

Q. That is a restaurant up on Second Avenue?

A. It is a restaurant on Second Avenue.

I went up and met him. He said, "I will be sitting at the first table." The Gerst House has a beer bar on one side, one table on one side, then at the left as you enter it has got a big round table, and then a row of booths.

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"I will sit at the first table."

So I went up to see Childress. And Childress repeated this matter of Vick having information that would help me and help Mr. Hoffa, but that Vick wanted me ———.

I said, "Now, Harry, just to tell you the truth, I am here because of an entrapment by Vick. I am here because he made certain pretenses and things like that and let me into it then where he presented me with a thing that he had got my agreement to it. And now I am under indictment."

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I said, "Now, Harry, this man is not my friend, and he is not your friend."

He said, "Yes, he is my friend. I was born and raised with him."

I said, "You just keep this in mind. The only thing he would have to do to help me is tell the truth. If he would tell the truth, I would be acquitted. So don't let him make you think he has got some vast secret information that would help me. The only thing that would help me would be for him to testify truthfully."

He left.

Now, by that time, as I say, I am becoming more alert, and as these first things happened, Mr. Norman — I thought, for instance, when I heard from Mr. Wallace and Mr. Childress — I thought, here this man is out to P. 752

entrap me again.

But by that time I began to realize that Vick quite probably could be undertaking to solicit a bribe.

I received my next telephone call —

Q. From whom?

A. From Harry Childress. Now, my next contact with him came by telephone, at a little before eleven o'clock on — it could have been I think — it was the 31st — it would have been March 31st, according to the memorandum that I dictated at the time.

Q. March 31st?

A. Yes. I also realize this, that it would get down probably to proof in the matter. So, following that conversation, I began doing this. I would — when he called in, I would signal my secretary for her to get on the telephone and take down verbatim, as best she could these conversations.

On this occasion on March 31st, I was seated and talking with Fred Ramsay, one of the people that had been —

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had done work for me as an investigator. He asked me to meet him again at the Gerst House.

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Q. Who asked you to meet him?

A. Childress.

Q. That's over the phone?

A. Yes.

And — well, I have skipped one conversation which I should relate, because it relates to this.

After I had this conversation in which I told Childress that the only thing that I could ever want or need from Vick would be the truth, he called me back —

Q. When you say "he", use names, Mr. Osborn.

A. Childress called me back and said, "Vick says to forget it."

I said, "I don't want to forget it. I am not going to forget it. I want you to come down to the office right now, while it is all fresh in your mind and in my mind, and I want you to give me a statement about it so that if you are called as a witness you will be able to speak accurately and so will I."

He said, "I am not going to do that to Bob," Childress said, "to Bobby. I won't do that to Bobby."

Q. Bobby is Vick?

A. Bobby is Vick.

Q. Then Childress called you later?

A. Yes. Then Childress called me later. And this is

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the way it occurred on the 31st day of March:

After I — I told Childress, I said, "I am tied up for about ten minutes. Go ahead, just wait for me there at the Gerst House, and I will be there in about ten minutes."



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As quickly as I could I told Ramsey, Fred Ramsey, of these approaches that had been made.

MR. NEAL: Excuse me just a moment. May it please the court, as I remember the testimony, Mr. Vick said that he had committed this man Childress to go to the office and get the money. Now afterwards he testified that he didn't know what Childress did. It seems to me the person to testify about anything here is Childress. If Vick testified to anything Mr. Osborn is testifying to here now, Childress is the person to do it. All this is strictly incompetent testimony.

So we object to it.

THE COURT: The objection is overruled.

BY MR. NORMAN:

Q. Go ahead.

A. So I said to Mr. Ramsey, "Will you please go at once to the Gerst House? There will be this man seated at the first table, and if you can take the first booth next to the P. 755

first round table, and I will try to sit directly behind the booth and I will try to get Childress to move close enough so that you can hear what is said."

Well, nervously, I was making myself wait out the ten minutes. I had a cup of coffee, and then I went down, bought a pack of cigarettes, at Stumb's, which is in the Stahlman Building.

John Polk came in, another investigator, who had been coming back, and checking with me and working with me from time to time. He came in to Stumb's and I grabbed him and explained to him that this man had been making these approaches to me, and that I had sent Fred Ramsey, whom he would know, to the Gerst House to take a position in the first booth, and for him also to go, and that as soon as the conversation had ended, and without exciting their

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suspicious, for them to come back to my office and the three of us would separately dictate every word of the conversation as we could remember it.

Q. All right. What did you do then?

A. Well, in that conversation —

Q. Well, did you go to the Gerst House?

A. I did go, yes.

Q. And was Childress there waiting for you?

A. Yes, he was.

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Q. At that table?

A. Yes, he was.

Q. And had the other two men taken their positions in the booth there?

A. Yes.

Q. What did he say then?

A. Well, if I may give it in some detail —

Q. Did you come right back, you and Polk, and Ramsey, and dictate what had happened there then?

A. I dictated, then Ramsey dictated, then Polk came in a little bit later and dictated.

Q. All right. Tell us what took place then.

A. After setting this thing up and joining him, I asked Childress whether he had talked with Vick further, and he said, "I talked with him on yesterday," and I asked him what Vick wanted. And then Childress went into an explanation of his own position in the matter, saying that he didn't want to get involved in anything, and I repeated to him again that the only way Vick could help me would be by telling the truth. And Childress then began to argue — Childress argued — "But you don't understand how much Vick stands to lose if he tells the truth."

And I said, "He's really not going to lose anything by telling the truth."

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He said, "Yes, he will."

And I said, once again, that the only thing that he could do would be to tell the truth about my entrapment, and that was all that anybody could ask of him, and that he should do that.

And he said, "But Vick wants money to do that."

And I told him that I wasn't going to pay him a dime.

He said, "All right, we will go to the union officials," in the conversation.

Now several things occurred which are in the memorandum, but they are just — they are details, like this: I was dressed, of course, with a coat on, and I smoke cigarettes, and they always stick out a little in this pocket, and when I got Childress to move over close to me, he reached over to feel of my pocket so I took my cigarettes and cigarette lighter out, to show him —

Q. That you didn't have a tape recorder on you?

A. Then I got up and took my coat off, so he would know — I said you can feel my back. And things like that occurred.

Q. Was that essentially all that took place then?

A. That's the essential of it.

Q. All right. Did you hear from him later?

A. Well, yes. But by this time I knew then that it was

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worthy of the most careful preservation. I went back to the — I went back to the office, and I don't know any of the Teamster people in Indianapolis, or any place except locally here, in Nashville. I went back to the office and after we had dictated memorandums I told Mr. Polk, I said, "Now, this boy, he's going to come back again, even though that I have made these statements to him. You go out and see if you can get me a tape recorder."

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And so Polk went off to do that.

I then — I called Chattanooga to try to locate some of the people, some of the attorneys that I know down there to see whether they knew any Teamster people in Indianapolis. Childress, you see, had worked in Indianapolis, and Childress, if he had any contacts —

Q. And Vick had lived there?

A. And Vick had lived in Indianapolis. And if they had any contact, it would be Indianapolis.

So they told me that they would just have to find out for me. But I outlined what it was, I said, "They are going to be contacted, and you be ready to record every minute of the conversation, because this is vital to my case."

Q. Was that the beginning of the arrangements, how you got the Louisville, Indianapolis and Nashville con-  
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versations and trips that he made recorded?

A. That was the beginning of it. Because of the threat, and — I think in order to get someone that would have any influence with the people, they had to go to Mr. Hoffa himself, who called them and said, "Take these conversations down. Don't let this man get away with it."

He had, Childress had said, at the end of the conversation, that he would contact me again. He would come back to see me again, but he was going to contact me again at two o'clock.

Polk, Ramsey and I all agreed that he wouldn't come back again at two o'clock, but he would contact me again.

So, as I say, I got the tape recorder, and sent Mrs. Oran, my secretary, out to the drug store to get me some inch-wide surgical tape so I could —

Q. Tape it on you?

A. Conceal it. And I made up my mind that I wouldn't put it on my back, because he would probably come around



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and pat my back before he talked to me, knowing the way Vick would operate. So I tested it to see whether I could get away with one strapped to my leg. And you can.

Childress did not actually call back to me until April 1. That was just a telephone call. He asked me to go down to Stumb's and await a call.

Q. Asked you to go to Stumb's and wait for him to call  
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you there?

A. That was so that the government wouldn't know what he and Vick were doing.

MR. NEAL: Well, Your Honor, we object to that.

MR. NORMAN: All right.

THE COURT: That objection is sustained.

MR. NEAL: I ask that —

THE COURT: The objection is sustained.

THE WITNESS: He asked me to leave my telephone and go down to the restaurant in the hotel and wait for a telephone call. So I went down there and he called me and said, "I want you to meet me at Warner's Drug Store."

BY MR. NORMAN:

Q. What Warner's Drug Store?

A. Warner's Drug Store on the Public Square. We call it Warner's. Really now it is Wilson-Quick. It used to be Warner's for years.

So I put on this tape recorder and went to Warner's Drug Store and there had a conversation with him.

Q. With this same —

A. With Childress.

Q. What took place then?

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A. He had told me, and — well, I then questioned Childress, the conversation went like this: I questioned

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Childress. I said, "Now, what is your own belief about this man's sincerity? What is he up to?"

He said, "He's sincere. He wants money. He thinks the government has mistreated him and he wants money."

I said, "How much money is he trying to get?"

And Childress said, "He's got an awful lot to lose but he won't tell me exactly. He has never named a figure."

I said, "Well, who would he name a figure to?"

And he said, "Well, there are three people that he would trust. He would trust Mr. William E. Haggerty, or Mr. Jack Shiver, or William E. Bufalino, all of whom are Hoffa attorneys."

I said, "He knows that Mr. Haggerty wouldn't talk with him under any circumstances. I might, because of my friendship with Bufalino or Shiver, get them to come over and listen to him."

"Well," he said, "that's what we want you to do, then. Get them to come over and he will meet with them."

I said, "All right, I don't want — I am not going to have Mr. Bufalino or Mr. Shiver or any of the rest of them walking into some trap such as I got into."

I said, "Harry, you will have to be the one that, let's say,  
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gets the room. You take the responsibility for that. I don't want them going into Vick's room."

And of course Vick probably wouldn't go to the room that they selected.

He said, "I will call you back about it."

So he called me back, after this conversation had been recorded, told me that I was to get Bufalino or Shiver to come in and register in any motel as William T. DeNumbreon.

I said, "Listen, I will have to spell that to Bufalino four times. That's not a name that they would be familiar with."

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He said, "Well, Harry said you would probably have to — Bobby said you would probably have to spell it four times, but that is what is to be done."

I called Chattanooga. I talked with Mr. Bufalino. Mr. Bufalino could not come until four or five days later. I had been left a telephone number by Childress at which I could call back. He and Vick were at the putting green at Shelby Golf Course, and they would wait there until I could call them back. I called them back and told them that it could not be done until four or five days later; and on the following day Childress called me and said, "It's too long a time. Vick thinks they would be setting him up. Just forget it."

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Now, since that time Vick and Childress have dealt entirely with the Indianapolis people, and of course you have those tape recordings.

Q. You have never had any contact with him?

A. I didn't participate in those.

Q. Now, then, Mr. Osborn, when you came down here the last time, before Judge Gray and Judge Miller, with reference to this record the tape of which the jury has heard —

A. Yes, sir.

Q. — I would like for you to tell what happened with regard to that to the jury, in your own words, in detail.

A. Well, the entire record of it has been read to you all by Mr. Neal and by Mr. Hooker. I came down and as that record shows, before I had been permitted to hear this tape recording, or examine any of the affidavits, I made a statement as —

Q. Now you are speaking of the first meeting now?

A. No, I am speaking of the disbarment meeting.

Q. I mean the disbarment meeting.

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A. Yes. Which was the first time, of course, that I had any — it wasn't until after I had made a complete statement about it, until I was permitted to hear the tape recording.

Now I had made up my mind to tell simply the truth about it. I realized that that would accomplish my disbarment. P. 764

ment, and yet I also realized that I should make a complete and true disclosure about it, so I did that.

I told Judge Miller about the way the thing had occurred, and about the last and final talk that I had had with Childress, which had taken place on the 11th, and which was played to you all on the record, and you all also were given transcripts of it.

Now, because I had made myself, even though ashamed and in a state of shock about it, I made myself tell the truth about it. The tape recording did confirm what I said, and in addition confirmed, as I will point out to you, what I have said, both what I have said to Judge Miller and what I have said to you ladies and gentlemen.

It shows the existence, the happening of these first conversations in which Vick persuaded me that he was talking with a cousin and persuaded me to believe that he was doing what he was doing, and in which he finally, on the 11th, obtained from me an agreement — for which I am am being prosecuted. It is probably fresh enough in everybody's mind to where you wouldn't need the transcript back, but —

Q. That's the transcript you have before you.

A. I have different transcript. They didn't have a copy for me, but I had a transcript of it from the disbarment proceedings.

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When the conversation started, I said to Vick, "How far did you go?"

As I say to you all, when he had left me on the conversation before and said, "I'm going to go to see my cousin," I said, "Don't go. You are rushing me into the thing. And if you go, don't go too far." He had me by that time hooked.

So when he came in, in concern and worry, I asked him, "How far did you go?"

"Well," he said, "I went pretty far."

Now, his next statement refers to — the next thing that he says refers to these conversations about which I have told you, but which he never reported to the United States. He says that on the 7th, why, he told me he had a cousin, and I said to go to him and see him, try to get him on our side.

Now, in order to accomplish his entrapment and agreement, he is feeding me back what I have said to him from these other conversations and unless you know about these other conversations much of this is unintelligible.

"Vick: Well, I don't know that, but anyway he brought the case up." As I had said to him, I had told him not to bring the case up to this man even if he ran into him accidentally.

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"He got to talking about the last Hoffa case being hung, you know, and some guy referring to \$10,000 to hang it, see."

Now that refers to a conversation that we had, which I have described to you, in which he came to me and said he pretended to have seen his cousin, over the weekend, or some — you know, within the — he came back with the speed of an antelope but he pretended, you see, to have talked to the cousin, the cousin brought the case up, and

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said to him, "Tippens was a fool." This was a reference back to that conversation which he had not reported to the government, but which did occur.

Now: "Vick: I am going to play it slow and easy myself, and anyway we talked about, something about five thousand now and five thousand later, see."

So he did, he brought up the \$5,000, see. As I say in these conversations that we had had, but not reported.

This had occurred, I had said he must not bring up money to the man, he must not approach the juror. I had said to him, "Even if the man brings up the case, don't mention money to him. That's not even good common sense, If he is trying to get money from you, he will name you a figure."

Now, I agreed to that thing. But, as I told Judge Miller,  
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and — I was in this situation: I was trying really, sickly, but I was trying, to stay away from the thing. I had continued to insist to Vick throughout that it wasn't worth his time to talk with his cousin. He had, being a member of a union, they would have challenged him. In addition, I had told Vick that they would not take him because in the meantime this man had been serving as a juror; he had tried a case involving a lawyer, and he had hung the jury for an acquittal.

I said, "The government will challenge him for that." And there again you have a conversation.

Now I explained to him that the government would object to him.

Then — although he didn't report it, he makes a reference again to the way that he has played me with his harrassment and so on.

"Vick: I don't know. I don't frankly think since last year, and since I told them I was through with the thing,

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I don't think I have been under surveillance," a reference to — just like this next conversation —

Q. Now, at that time when he made that statement, as shown in this recording, of course you had been in connection with him since February?

A. Yes.

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Q. According to what we have —

A. Yes.

Q. All right. Go ahead.

A. Now, even at this point, and wanting to be shed of him, wanting to be out of it, and ashamed of myself, you see, for what I am doing, I am still trying, even at that point to see that he is protected against any harrassment or trouble.

In this very recording that you heard, again reference comes to these conversations in which he had told me that they had told him that he would be fired if he took any more work in connection with the Hoffa case.

I reminded him that all I have given him is jurors that would never appear in the Hoffa case. I said to him, "At that time you had already checked on the jury that went into Miller's court, background, occupation, that sort of thing, on those that went into Miller's court. You didn't even investigate the people that were in Judge Grey's court."

And Vick comes back again, continuing the pretext, Vick said, "Well, here's one thing about it, Tommy. As soon as this damn thing is over, they are going to kick my blank out anyway."

Going back, making a reference to the way that he originally got the employment.

Now, the conversation continued, and he is talking about,

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he is referring here to a conversation that I had had with him in one of the early conversations, in which — which I had had with him, and saying not to go to his cousin that would be a waste of time, I had also told him this: That John Polk is investigating Judge Miller's — Judge Gray' jury, and some of what we have been doing in arguing how this jury is fixed is beginning to have an effect. We have got some decent people on this jury. We are going to have some friends on the jury if it comes off of that panel.

"Vick: Oh, now, I am going to play it just like you told me previously, to reassure him and keep him from getting panicky, you know. I have reason to believe he won't be alone, you know.

I said, "You assure him of that 100 percent, and keep down any fears that he might have."

And I said, "Tell him that there will be at least two others with him on the jury."

Now, as I told Judge Miller, and frankly tell you, for me to make that statement, that's not a truthful statement. You all have been through the process of how a jury is picked, and you get drawn out of a box. No one could say that any one of you would be on the jury, or any two of you would be on the jury. But I said that because by this time, with his persuasion and so on, I was agreeing to the com-

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mission of this pretended offense, and so my purpose was, as I told Judge Miller, to assure this man, when and if a deal was made with him.

I next went on — no, next he again refers to these earlier conversations that he didn't report. Vick says, "Yeh. We haven't talked really definite, and I think he clearly understands. Now, he might — it seemed to me that maybe he thought I was joking, or, you know."



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And I said, "That's a good way to leave it. He's the one that brought it up." Again the reference to these conversations which he reported.

His last, the last thing that I have marked to call your attention to is really just over the timing of it. At that conversation of the 11th, he then asked me whether he could submit me a bill and I told him that he could, but it would be several days before we would pay it.

Q. Now, Mr. Osborn, I want to move to the second count in this — Is there anything else that I have overlooked that you would want to say with reference to this first count?

A. No.

Q. Now, I wish you would in your own words tell all you known about the Harry Beard implication in this matter.

A. Yes, sir.

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Q. And just take it up from the beginning, so the jury will have it in sequence.

A. Well, we selected a jury in the Hoffa trial here in Nashville, completed after about a week of questioning, and among those seated was Mrs. D. M. Harrison.

Now, I had a preliminary report on her that was entirely borne out by what my own observation of her was. She was a person of character and of sense and of intelligence, or a high type person.

The indications, the early indications were, from the interest that she had when Mr. Haggerty would question her and so forth, was that she was probably pro-defense. She was probably more on our side than on the government's side.

Another lady had been taken who sits in the same — who sat in the same seat in which you sit (indicating) a school teacher from Murphreesboro, a Mrs. Mary Hall.

*Testimony of Z. T. Osborn, Jr.*

Now the indications were, from just observation of the jury, as well as the little background information that we had, that she was pro-government.

I realized that if Mrs. Hall was pro-government she would be a strong figure on the jury, and that it would be most important if we could develop Mrs. Harrison's potential for leadership as another woman that would oppose

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her. So for that reason I wanted additional information about Mrs. Harrison. It became important to me to see whether I could get additional information about Mrs. Harrison.

Now, this also was going on at the same time which made it even — this simply heightened, now, the need for me to try to get additional information on Mrs. Harrison, even though the case had been in progress for some weeks.

The defendant had gained access to a conversation between Judge Miller and James Stahlman, which was later published in full in the paper. He had also gained information that Judge Miller was an active applicant for promotion to the Court of Appeals. And I was being nightly subjected to very great pressure and argument to sign a certificate against Judge Miller charging him with bias and prejudice, which I was refusing to do. And in getting out of it, and in convincing these people that they should not try to get a mistrial on that basis, I was with them almost nightly, taking them through an analysis of the jury, and showing them that there were people that weren't prejudiced against them, and that they were going to have a fair trial, and quite possibly win the case.

But that doubled, you see, any information, the value of any information, legitimate and proper information I could get about a juror.

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*Testimony of Z. T. Osborn, Jr.*

I called Ramsey and Vick in one day in early December. I asked them, I think, I asked them who they had gone to—

Q. This is '62, of course, to differentiate it from '63?

A. This is 1962.

I asked them who they had gone to in Lebanon for information on Mrs. Harrison. And they told me that they had gone to Harry Beard, the sheriff had sent them to a deputy marshal, and the deputy marshal had sent them to Harry Beard. I told them, I said — now in the meantime I had had some information come in from this other team, either Anderson or Polk, someone — someone had told me that Scotty Harrison is an alcoholic. I said, "I want you to go back up to Lebanon and talk with Harry Beard, and try to get me any additional information that you can about Mrs. Harrison."

I explained to them that she was probably going to be the only one of force that would offset Mary Hall. Or perhaps I didn't give them the detailed information. I just told them that I needed the information.

I said, "Now, you may find that Beard won't talk freely with you. It may be that he will have information that he would talk to me, lawyer to lawyer, but that he would not

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talk with you. If that is the case," I said, "tell him when he can get to Nashville to drop by and talk with me."

So they left, and they want.

Now, on the fifth day of December, while we were in court, and while the jury was excused, a legal point was being argued, a man walked into the courtroom and tried to kill Mr. Hoffa, very ineffectively. He thought he had himself a weapon that would kill, but it wasn't much of a weapon. I was seated right behind Mr. Hoffa. And when the man leveled down, he pointed at me first. Well, I dis-

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played all my bravery and took under the table. They accused me later of jumping into a file cabinet drawer.

But Mr. Hoffa got up and hit the man, and so on.

From that time on, the jury was locked up, just as you are locked up. The jury had not been previously locked up. But from that time on, from December 5 forward, that jury was locked up, under lock and key, under the marshals, as jurors, just as you have seen.

Several days later, after December 5, probably no earlier than the 9th or 10th of December, and after the jury had been locked up four or five days, I went back to my office, and Harry Beard was waiting for me. I now know they brought him up to the hotel to try to see me, but anyway  
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I hadn't been able to see him.

But anyway, I went through with him, questioning, getting from him the additional information that I wanted. Alcoholism. In a metropolitan center you will find that there are people that have a drink at night before dinner, nothing is thought of that, many people do that. You will find that if some person does that in a small town a lot of people in the community will say, "Well, they are alcoholic." Alcoholic is a thing, then, that, in my report from some country fellow, may not mean alcoholic at all.

Then you have this problem, if a person is an alcoholic, it reacts in different ways on his family, and largely, I would say, according to the type alcoholic that he is. A wife and family can get along pretty well with what you would call a spree drinker, a fellow that goes off once every two or three months and stays drunk two or three days. What a wife and family cannot stand is some fellow that is sodden drunk all the time, every night, and so on.

I went over that sort of thing with Beard, and he was extremely helpful, Scotty Harrison is a fine man, his repu-



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tation for alcoholism is more of a country reputation. I don't think that the Nashville bar would call it that reputation. I also learned for the first time that Mrs. Harrison actually worked with her husband, a lot of times, doing his

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secretarial work. I got some information about her education, and the fact that she would herself be entirely knowledgeable about abstract legal propositions, such as the right to be tried in your district, and the history of that, as part of the Declaration of Independence, that the King had taken us from beyond the seas for trial.

Well, Hoffa had been taken from his home community and brought to Nashville for a trial. Other things like that he gave me.

I would judge that I talked with him about those things for 20 or 30 minutes.

Now, at that point he said, "You can guarantee Mrs. Harrison for \$20,000." This is what he said to me. He said, "It will take \$20,000, but you can guarantee it."

I said, "Well, what do you mean?"

He said, "I can talk with Scotty Harrison and he will absolutely guarantee it."

He probably didn't know this at the time he said it. I said to him at once, I knew it and had known it for four days. I said, "Harry, that jury is locked up. There is no way for Mr. Harrison, or any person in the world to go in and talk with Mrs. Harrison, or to try to make any sort of a deal with her. That's absurd."

He came back with the insistence that he could, that he

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could talk with Scotty Harrison.

Now, I recognized that he was lying, and I recognized that at the maximum what he was trying to do was this:

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In part it made me feel good, in part it made me feel concerned. It made me feel good because even though he knew that no one could talk with Mrs. Harrison, still he figured he could make money out of predicting her vote. He felt then very certain that Mrs. Harrison was going to be for the defense. That part of it made me feel good. I was glad to know that we had, that our impression that she was for us was correct.

The concern that I had grew out of this: Now Harry had at one time had a pretty good name in Lebanon, and had been pretty well received with the lawyers. They had sent him to the Legislature and so on. They elected him Alderman. But at his last effort the lawyers up there had led the fight against him and they beat him so badly for the Legislature that he didn't even offer again for his councilman's seat. They absolutely had been fed up with him over the things they knew about him from his legislative service. And my information was that Scotty Harrison and Mrs. Harrison detested him. One of the reasons that I had felt good that they had gone to Beard was — and that I could talk to Beard was — I figured this: that if I would make allowance for some bad things that Harrison —

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that Beard might say against Harrison, I would get the truth of it, even stretching the bad things on it, but nonetheless he would level with me, whereas some real close friend of Mr. Harrison might try to protect him and not even say an unkind word about him, particularly on this alcoholism thing.

Well, the only concern then as I say, while feeling like there he is knowing that Mrs. Harrison is for us, some word has gotten around up there, people talk in a small town and lawyers talk to their wives and lawyers talk to other lawyers. The only concern that I had then was

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whether — my information had been that Harry Beard would be the last person in the world who could talk with or influence Scotty Harrison. That was my information. But I was concerned then a little bit about the correctness of that. I thought, "Well, what could it be? Maybe something is going on. Maybe something — maybe he has talked with Harrison."

So I ended up the meeting with him after explaining to him that there was absolutely no way to talk with Mrs. Harrison, absolutely no way for someone to give him \$20,000, and on a speculation that somehow he could work a miracle and get her husband into the presence of two marshals and say, "Now we are going to make \$20,000 if you vote for the defendant" — I ended up the meeting after explaining those things to him.

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About — well, it was within a couple of days later he was back in my office, waiting for me when I got back from work. He thought that he had all of the answers to these objections that I had made. He said, "Scotty can certainly talk to Mrs. Harrison."

I said, "Now, Harry, he cannot talk to Mrs. Harrison. She is locked up. She is under guard."

He said, "He won't have to talk with her." This is what he said. He said, "I told you that she had worked as his secretary, and what I would get Harrison to do is take a file and say that he has to talk with her about the file, and that — and then in the file it can be that they will be paid if she votes for the defendant."

I said, "Harry, that's so ridiculous. If you were to show up with any sort of a paper, or a letter or anything like that, they wouldn't leave it up to some marshal who might be dumb enough to let something go by. Before any paper writing went in to that woman it would not only be ex-

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amined by Mr. Neal, who is as sharp as a tack, but Judge Miller would look at it, and you would just absolutely murder yourself, if you tried anything like that."

"Well," he said, "I haven't thought of that. That may be won't work, but there is a way." He then came — he then thought at his second meeting that he had an answer

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to the objections that I had made at the first meeting about paying him \$20,000 or any other sum in advance, just on the speculation that someone would vote one way.

He proposed that the \$20,000 be put into escrow. Now this was his proposal. I said, "Now, Harry, who do you know well enough now to just put your law license and your life in their hands? Who in the world do you know well enough, and who do you think I know well enough to do that? Let alone who do you think that anybody for the defendant knows well enough to think that after the trial is over, if Mrs. Harrison votes to convict, they could sue them and get the money back?"

I said, "The whole thing is ridiculous. It would not work."

He came back, I believe a third time, or a fourth time. The last time — now the last time that he came, since I had rejected his other propositions, the last time he came, instead of, like he says I came back and said, \$50,000, a figure so high — now he came back and he said, after the preliminary conversations, he said, "I can get you two jurors for \$25,000." That was his proposal.

I said, "Harry, exactly the same arguments are still just as valid as before. It cannot be done." He sat there and I looked at him, and I said to him, "Now, Harry, you

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came over here thinking that you were going to make some big money. But now aren't you glad, really, that you didn't get into anything?"

He had a funny look, but he put out his hand, and we shook hands. I said, "Aren't you really glad that you didn't get into anything? Isn't that better than having the money and being worried the rest of your life?"

He said, "It is."

I heard nothing further from Harry. It has been indicated that Vick used him again for investigation when the Grand Jury came up. They did not always keep me up to date as to who they went to in the 15 or 20 counties. There are 30 counties in this district on the Grand Jury.

I didn't hear from Harry Beard again until about the end of August of 1963, and this is what occurred: It was a Saturday morning. It was probably ten minutes until eight, maybe 7:30, the telephone rang, and my wife said it was for me, and I answered it, and it was Harry Beard. Harry said, "I have got to see you. I have got to see you this morning."

I said, "Well, Harry, I am going to try to play some golf this morning and I can't make it this morning, because then the fellows that I play with, they won't have a fourth to play with."

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He said, "It's important. I have got to see you. The FBI has been to see me."

I said, "Even if the FBI has been to see you, won't it wait until Monday?"

He said, "It won't wait until Monday."

I said, "All right, Harry, I will cancel the golf game and I will come downtown and talk with you."

I went downtown, and had some coffee or something like that, and went downtown, and he was either at my office,

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or waiting for me, or there within a minute after I got there. He made it from Lebanon there by the time I made it from home there.

I said, "Now, Harry, what has happened?"

He said, "Well, the FBI came to see me and they asked me some questions."

I said, "Well, there's not anything out of the ordinary about that, because every person that has furnished any information to me, or took any part in this, has been through exactly the same thing. This is just a very thorough investigation which these people are doing."

I said, "What happened?"

"Well," he said, "They asked me if I had ever done any work for you on the Hoffa case, and," he said, "I told them I had not."

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He said, "And then they asked me whether or not Vick and Ramsey had been in my back yard, and I told them that they had not."

"And then they asked me whether Vick and Ramsey had ever paid me any money to represent them, and I told them they had not. And then they asked me——"

I said, "Well——"

Then he said, "They asked me whether I had kept any copy of any correspondence with you."

"And then I told them I wasn't going to answer any questions."

So I said, "Well, Harry, the only person worse than you that I have heard of was a boy I represented once. The police called him in. He said, 'I want to deny anything. I wasn't there. I don't know these people, and I am not going to answer any questions.'"

I said, "He went in, told two lies and then said he wasn't going to answer any questions. Now here you are. You are

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a lawyer, you have been practicing ten or 15 years. The FBI have asked you three simple questions and you have told three lies, and then you tell them you are not going to answer any more questions."

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I said, "You knew that you had a perfect right not to discuss it if you didn't want to. But you certainly had no right to lie to them if they asked you anything."

I said, "Now in the first place in telling them that you had not done any work for me, you have told a lie that you will be caught in, because I will bet that right there in your office is your own file, and it is probably headed up Denny, Leftwich and Osborn, my firm, in which you have copies of these reports that you gave me."

I said, "Secondly, you did do work. You were paid by check. A careful record was kept of it. The fact that you worked certainly would be proven against you. You can't take that position."

I said, "Now, I know" — "I had no idea you would ever deny it, but I know that both Vick and Ramsey have been questioned by the FBI, have been taken before the Grand Jury, and they have sworn as to what they did. One of the things that I know, because they told me about it, that they did talk with you on one occasion in your back yard, and not only that, but that they had more or less fabricated a land union deal, or something like that, when they talked with you, before you ever came to me. I know about that because Fred Ramsey said I paid him \$50, and I told Fred when he told me about it, 'Now that's a silly thing. That's your business, and I am not going to pay you back that \$50. I know about that.'"

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And I said, "Fred and Vick will have nothing to hide about this. They will have told the truth about it and you are certainly not going to expect them to back up and commit perjury because you told these lies."

He said, "Well, what am I going to do?"

I said, "There's just one thing for you to do. You get back up to Lebanon and you call the FBI and you tell them that you have made some misstatements to them and that you want to be re-interviewed."

"Well," he says, "what can I say?"

I said, "I don't know how you can handle it."

I said, "I know this, if they came into see me and showed me their badges, I would start shaking. Everybody is scared of the FBI, anyway."

I said, "Maybe you could tell them that you were just frightened and that you didn't know what you could tell, maybe you felt like it was confidential. I don't care what sort of an excuse you give them, Harry, so long as you go back and tell them the truth."

Now he was still standing there. I said, "Now, Harry, you are worried about this business that you did back last December." I said, "That's really what's on your mind, isn't it?"

He said, "Yes."

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I said, "You didn't commit any crime. You did not commit a crime. You were doing a fool thing, but you committed no crime. Your coming to me and pretending to me that you wanted to talk to some juror's husband, but you never had any intention of it and you never did."

I said, "If you did commit some sort of an offense like that, it wouldn't be a Federal offense, to come to me and try to get me to pay you money on that. The FBI would have nothing to do with it."



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I said, "I was never fooled by it, or anything like that, and as far as I am concerned, I never had any intention of telling anybody what you did on it."

And I left at that, and we shook hands, and the next thing I heard from him he had gotten me indicted, and I am here to be tried.

Q. Was there ever any contact between you and Harry Beard after that of any kind?

A. Only this, Mr. Norman: I called his office, talked with his secretary after this matter arose, asking whether he would come to your office and talk with you. I did give that word to his secretary.

Q. I had asked you to tell him to come to my office and tell me what you knew about it.

A. Yes, and I have never had any conversation with him  
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since.

Q. You have never had any?

A. No.

Q. Nor have you heard anything indirectly from him, directly or indirectly?

A. No, sir, I have not.

Q. Now, Mr. Osborn, does that constitute your whole knowledge and connection with this matter?

Have I overlooked anything?

A. I don't know of a single thing that has been overlooked, no.

Q. Have all of your records, the records of your firm, and everything, have they been under constant scrutiny ever since this by the department?

A. Yes. Well, The Grand Jury has received, and so far as I know has not yet ever returned any of our records. They still have all of our records in their possession. They may have, but I don't know it.

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Q. Now of all the work that Vick participated in while he was employed by you, or Ramsey, for you, the only thing that they have ever charged you with doing wrong in connection with Vick was knowing that, no investigation was made but this pretended contact with Elliott?

A. Yes. He did procure from me, you see — —he pretended that he had this deal, would I agree to it; I agreed to it, as they heard on the tape. That's the only charge about it.

MR. NORMAN: You may examine.

**CROSS-EXAMINATION**

BY MR. HOOKER:

Q. Mr. Osborn, how long did you say you had been practicing law?

A. Outside of three years in the army, I practiced — well, since I was 21.

Q. And that has been about some — some 20 odd years?

A. Twenty odd years, yes, sir.

Q. And during that time you have been an assistant United States attorney, and you also for a time, I believe, were City attorney?

A. Yes, sir.

Q. And you have tried a number of cases through the years in both the state and federal courts, in this and other counties of Tennessee?

A. Yes, sir.

Q. Now, in 1962, I believe you were employed by Mr. James R. Hoffa, or rather his representatives, to defend Mr. Hoffa in the case here known as the Test Fleet case?

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A. Yes, sir.

Q. And that was done by Mr. Haggerty?

A. Yes, sir.

Q. I don't want to inquire into any of your personal affairs, as far as amounts are concerned, but I take it that you were paid a substantial fee for that long nine weeks trial?

A. \$25,000.

Q. And did you have any contingent arrangements in addition to that of any sort?

A. No, sir, no, sir, a flat fee.

Q. Now, then, after the defense of Mr. Hoffa, where that case resulted in a hung jury, then there was an investigation here about some jury tampering?

A. Yes, sir.

Q. And the Grand Jury was convened at the direction of Judge William E. Miller?

A. Yes, sir.

Q. That started making its investigation in January of 1963?

A. Yes, sir.

Q. And you appeared from time to time for various people that were subpoenaed here as witnesses and were somewhat active in that investigation? I will express it that way.

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A. Yes, sir.

Q. And during that time I take it that you were still employed by Mr. Hoffa?

A. I was, yes, sir.

Q. And —

A. Well, now, technically I should set this record straight. My employment was by the International Union. Some of the others were employed by Mr. Hoffa, but —

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Q. Well, I am glad you interrupted me to bring that up, because I was going to ask you about it. You were actually employed by the International Brotherhood of Teamsters?

A. Yes.

Q. To defend — to try the first Test Fleet case, in which you were paid the fee you stated, and then you were employed by the International Brotherhood of Teamsters in connection with the Grand Jury investigation?

A. Yes.

Q. And then when the case was first here, first docketed here, before the transfer to Chattanooga, and before these matters arose that we are investigating now, you took some part in the early part of the indictment that was returned against Mr. Hoffa and others in connection with the jury tampering?

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A. Yes. I took charge of what you call the pre-trial motions, investigations, and right on into the certiorari and so on with the Supreme Court.

Q. And you were employed in that instance by the International Brotherhood of Teamsters?

A. Yes, sir.

Q. And compensated by them?

A. Yes, sir.

Q. And then after the case was transferred, and after this matter arose with Mr. Vick, you still, notwithstanding this disbarment proceeding here. I want to ask you about, you went to Chattanooga and advised with them in whatever capacity it was, during the trial of the jury tampering case in Chattanooga?

A. Well, I was not in Chattanooga, I was not admitted to the meeting of the lawyers and things like that. I had been disbarred, and it would have been in contempt.



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But I did do this: I had conducted the entire investigation, much of the research, and I went over there to try to turn over to counsel that represented Mr. Hoffa, as much as I could, so that it would not hurt Mr. Hoffa any more than it had to, and also to do things that would be within the non-lawyers purvey, witnesses I could get subpoenas out, and things like that, and if witnesses wanted to know

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when to come, and where to come, I could do that sort of thing.

Q. And you were compensated by the International Brotherhood of Teamsters for the work you did in that connection?

A. Yes, I was.

Q. At that time?

A. I haven't been completely compensated. The last six weeks that I worked over there has not been paid, because of Edward Bennett Williams opinion that maybe it shouldn't be paid.

Q. Shouldn't be paid out.

Well, are you employed at the present time in any capacity by the International Brotherhood of Teamsters?

A. No, sir.

Q. Now, Mr. Osborn, in connection with the trial of the Hoffa case here, there were investigations of at least three instances of alleged jury tampering, were there not?

That is the alleged tampering with a man, a colored man by the name of Branton Fields by Parks and Campbell, was one?

A. Yes, sir.

Q. And the alleged tampering with James Tiffen by this man Lawrence W. Medlin is two?

A. Yes, sir.

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Q. And the tampering with Mrs. Pascal, who was on the jury, and whose husband was on the Highway Patrol, by Ewing King?

A. Yes, sir.

Q. And the — you were familiar with all of that?

A. Yes, sir.

I was actually, see, in the courtroom when those hearings were had.

Q. You were present when the hearings were had?

A. Yes, sir.

Q. You were present when Mr. Tippens, when — at the time Mr. Tippens came and reported to Judge Miller that some effort had been made to buy him?

A. Yes, sir.

Q. And you were present when Ewing King was taken in — was called before the court and was questioned about having gone to see this highway patrolman?

A. Yes, sir, I was.

Q. And then you were present when whatever proceedings were had in connection with the charge of Branton Field?

A. Yes, sir.

Q. And three men on that jury, that is, the colored man, Branton Field, Mrs. Tippen and Mrs. Pascal were excused?

A. Yes.

Q. And were there any others?

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A. No.

Q. And all of that, your knowledge of those efforts to tamper with the jury, those people have since been tried, all took place long before, some time before Mr. Vick came and this discussion occurred about Ralph Elliott?

A. Yes, sir.

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Q. Well, didn't the fact that there had been three people on the jury herein the Hoffa case that had to be excused by Judge Miller, and a number of people indicted, Mr. Hoffa indicted, Ewing King indicted, Campbell indicted, Parks indicted, Tweel indicted, and Doverman indicted — didn't that alert you to the fact of the seriousness of this matter of tampering with a jury at the time that Mr. Vick came and had his conversation with you?

A. Certainly I was alert to it, and also that underlies the fact that when I commenced this investigation I gave the same rigid written and oral instructions to those people that I had given previously. I wanted no such incident.

Q. Well, I am on the question of whether or not, Mr. Osborn, you were entrapped by Mr. Vick. Hadn't you all during the year 1963 been engaged in a Grand Jury investigation later resulting in indictments, some six people, I believe, in all, hadn't it been challenged sharply to your attention, of the dangers instant to tampering with a jury  
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in the Federal Court?

A. Yes, sir.

Q. And when Mr. Vick came, as you said, and mentioned this matter to you, I believe you said the first time on October 28, weren't you alerted to the fact at that time of how dangerous this thing could be?

A. Certainly.

Q. You were thoroughly familiar, I am sure, the fine lawyer that you are, with Section 1503 of the Code that makes it an offense to corruptly or by threats of force or by any threatening letter or communication, influences, obstructions or impedes, or endeavors to influence, obstruct or impede, the due administration of justice?

A. I am thoroughly familiar, I told Vick at the time, when he first brought it up, not to do it. He had been in enough trouble; he would get caught; he should not do it.

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Q. And you also, I am sure, as a former Assistant United States Attorney, and a lawyer of wide experience, are familiar with the section of the Code providing, "Whoever having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority of the United States, shall be fined not more than \$500 and imprisoned not more than three years or both"?

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A. Yes, sir.

Q. And you were familiar with that section of the code at the time you were talking to Vick, and later at the time when you were talking to Harry Beard and he was proposing to buy a juror as you claim?

A. Well, yes, sir. To answer your question, yes. But as I say, Harry did not once get it to the point where anybody — where he was even convincing me that he was going to try to talk with Scotty Harrison.

Q. Well, didn't you tell him the very last thing of how glad he ought to be that he didn't get the money to commit this offense that he was proposing to commit?

A. Well, I did. I was glad he hadn't committed a crime.

Q. Didn't you claim that he had been down here to see you two or three times making propositions in different amounts, first how he could fix Scotty Harrison's wife, and secondly, how he could get you two jurors for \$25,000?

A. Yes.

Q. And you never reported that to any court?

A. I did not.

Q. And you never mentioned that to Judge Gray or Judge Miller?

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A. I wasn't asked about it. I did not mention it.

Q. Wasn't you asked, Mr. Osborn? Wasn't you asked expressly to state to these judges any knowledge that you had of any jury tampering of any kind or character, or attempt?

A. I was. And he never approached Harrison, in my judgment never intended to approach Harrison. What he intended to do, if I had been fool enough, or if anyone had been fool enough, he intended to get some money under false pretenses. He didn't get any; he didn't commit a crime; but he indicated he wanted to.

Q. I understand you to indicate he was proposing to commit one, proposing to fix a jury?

A. He did. That was his proposal.

Q. Now, before I get into this other situation, I want to ask you, you stated to the jury that you had been disbarred. As a matter of fact there has been a disbarment proceeding tried by Judge Miller that has been read here, but that case is on appeal, is it not?

A. However; the disbarment order continued to be effective, in other words, I would not be permitted to practice. I am now disbarred. I have raised a couple of procedural questions with Mr. Norman's assistance, which might get me a new trial on it. But —

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Q. And the case is on appeal in the Circuit Court of Appeals in Cincinnati?

A. Yes, Mr. Hooker.

Q. Now, the other case, a disbarment in the state courts, has not yet been tried?

A. It has not. It has been issued but not yet tried.

Q. Not tried.

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A. I have, in order to have to not try it until I could be heard on these criminal charges, I have voluntarily agreed not to practice law.

Q. Not to practice law until these matters are determined?

A. Yes, sir.

Q. Now, Mr. Osborn, as I understood you to say, the first thing that originated this matter was a call from Judge Miller's secretary?

A. I think so, yes.

Q. And she said that Judge Miller wanted to see you?

A. Yes, sir.

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Q. And you were trying a case, then, or about to argue a case; and you told her that you couldn't be here until three o'clock, or would be here at three o'clock, or about that time?

A. Either that, or she told me to be there at three o'clock.

Q. Yes, sir. Then you came?

A. I did, then.

Q. Did you know before you came down here and saw Judge Miller what Judge Miller wanted to ask you about?

A. No, but here is the thing. In the back of my mind I had — well, I had told this man Vick that he wasn't to do anything, he was — until we knew that we were even going to have a trial, he certainly shouldn't contact his cousin. There was always in the back of my mind this worry that he would do something and that he would be caught.

And so, when I was called and went before them, it was with the feeling that here I let this man get himself in trouble. That was my feeling that I went before the judges.

Q. And didn't you have any feeling that you might have let yourself get in trouble?

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A. No, at that time I didn't have any feeling that I might have let myself get in trouble.

Q. You didn't have any feeling at all that you were in any trouble about it?

A. Well ———

Q. You knew Judge Miller well?

A. I did, yes.

Q. You had just finished the trial here of a case before him that lasted nine weeks?

A. Yes.

Q. You had tried a number of other cases before him?

A. Yes, sir.

Q. Knew him socially?

A. Yes, sir.

Q. And were on friendly terms with him?

A. Yes, sir.

Q. You liked him and I am sure you had every reason to believe that he liked you?

A. That is ———

Q. Certainly no reason to believe that he had any dislike for you. Let me express it that way.

A. That is not entirely accurate, Mr. Hooker. I came out ——— I came out of the Hoffa trial ——— and during the Hoffa trial ——— with a very good understanding that Judge

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Miller didn't like me.

Q. You think that he became displeased on account of these incidents about the jury?

A. No, I think it went back to the ——— I think that he conceived this dislike when I undertook to get him to give us a few more days to prepare and in my argument talked about the rush that was being put to it, and unneces-

*Testimony of Z. T. Osborn, Jr.*

sarily, and so on. And I think that he felt that I had criticized him personally. And from that time forward my relationship with Judge Miller had been ———.

Now, a lawyer — I don't ——— he doesn't have any wars with judges. You don't ever win any war with judges.

So I am sure Judge Miller would say there was never any kind of incident. But as far as I was concerned, I felt that Judge Miller had been — had disliked me since the trial. I had the idea, felt that way — Judge Miller.

Q. Did you feel when you came down here to see him on this first occasion, which I believe was November the——

MR. NEAL: 15th.

Q. (Continuing) — November 15th, yes. You had no apprehension before you came to see Judge Miller that you would not be treated fairly and courteously?

A. We would say that, yes.

Q. Yes, sir. Now, then, when you got down here to see  
P. 803

Judge Miller — and I read from the transcript of this first meeting that you had with Judge Miller and with Judge — was Judge Gray — was he present?

A. Yes, I think he was.

Q. And just the two of you?

A. Yes, sir.

Q. And the stenographer was there?

A. Yes, sir.

Q. And what was said was taken down?

A. Yes, sir.

Q. Judge Miller says:

"Now, Tommy, we have asked you to come in because we have information indicating a plan to tamper in connection with the Hoffa case — that is, the upcoming Hoffa case — to tamper with the petit jury panel.



*Testimony of Z. T. Osborn, Jr.*

"Further, we have information that some specific acts have already taken place in connection with this plan.

"You know, of course, as an attorney, and we now advise you that you have a right to an attorney ———"

No ——— I skipped a sentence.

P. 804

"This information, which is substantial, indicates that you are personally implicated.

"You know, of course, as an attorney, and we now advise you that you have a right to an attorney if you want to be represented and that you have a right not to say anything and that anything you say may be used against you. I am sure you understand that."

And you answered:

"Well, of course, I do, Judge."

Then Judge Miller said:

"I have this further question: Do you have any information concerning any plan or efforts to tamper with this jury or concerning any acts which have taken place for such purpose?"

And your answer:

"I do not. No, sir."

A. Yes, sir.

Q. And that was untrue?

A. It was untrue.

Q. Well, just tell the jury, Mr. Osborn, why, when you were called down here to meet with the two United States District Judges, Judge Miller and Judge Gray, and were asked there about this situation, that you denied it and

P. 805

didn't tell the facts?

A. Well, you understand why, Mr. Hooker, that there was no ——— let's say general plan. I knew that when he says,

*Testimony of Z. T. Osborn, Jr.*

"Was there a plan?" and that things had been done in connection with it, it could only be one person and one thing, Robert Vick and his cousin. I knew that. I knew then that either — either I must stick it out all the way and deny it, or I must at this time be a part of the imprisonment and destruction of Vick.

And I will say this. They did not show me the courtesy of letting me think it over a while. They said, "Go ahead."

Now, I have frankly admitted, and this is just part of the way I was raised and the way I believe, that loyalty and betrayal — a person doesn't do that. I really wasn't seriously tempted to tell on him when I was there. I realize it now I should have done it. And I have been disbarred because of that. And that is the thing that is in the picture that will probably prevent my ever being permitted again to practice, that one thing, not because of what Vick did but because of what I did in denying it.

Q. And you thought as a lawyer and an officer of the Court when called on by these two judges to tell the facts about it — you say you weren't even tempted to tell

P. 806

them, is that what I understand you to say?

A. I didn't think as an officer and a lawyer — as a lawyer or officer of the court. That is the way I should have thought. I should have thought that way. What I thought was as a person, and what I did was act as a person.

Q. And then didn't you say:

"Now, may I say this? As an attorney and addressed by the Court of which I am an officer, I would not undertake to exercise the privilege and — but I do certainly understand and appreciate your state about it."

And then Judge Miller said this:

*Testimony of Z. T. Osborn, Jr.*

“Well, specifically, do you have any — I take it from the answer that you have just given that that is the full and complete and candid answer on your part?”

And your answer:

“It is. it is; yes, sir.”

Is that what you said?

A. It is, yes, sir.

Q. Then I will get you to state if on that same occasion, in the presence of these two judges, Judge William E. Miller and Judge Frank Gray, if you weren't asked by Judge

P. 807

Miller:

“Have you contacted any person to make an effort to tamper with the jury in any way or had any conversation with any person for this purpose?”

And you answered:

“No, I have not, and I will — well, there is no point in elaborating, but I have — I should say that I have, in the contacts that I have had with people that have undertaken to do any work that would even bring them close to the jury, I have been extraordinary careful of — that there should be no such implication.”

Did you answer that?

A. I did.

Q. And that was untrue?

A. Well, let me take it into parts.

Now, what had been done with Vick was as he — it was a presentation to me of a thing that he had done against my advice and asked him not to do it. It was a presentation to me of that he had me a great deal which I was going to agree to, but which had been left in this fashion, “Do not contact him. We don't know who is going to be on the jury,” and so on.

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*Testimony of Z. T. Osborn, Jr.*

That was the way that I was feeling about it, you see. This was the way that I was picturing it because that is the way Vick was picturing it to me.

And I wasn't — when we were talking there, I wasn't concerned with some charge against me. What I was concerned with was that he had done something since I saw him — not something that led up to the 11th, but that since I had seen him, and also I had asked him not to, as shown by the tape, and had gotten himself in trouble, and then it would be now either for me to testify against him or to refuse.

Q. And you say now that you told these falsehoods in order to protect the man that you now claim entrapped you?

A. That is true.

Q. In other words, the reason you did not tell Judge Miller and Judge Gray the facts and the truth was in order to protect this man who you now say deliberately set out to entrap you and get you in this difficulty?

A. That was the purpose in my mind. That was what put me in that position.

Q. And then didn't Judge Miller say:

"Now, you, of course, understand that by the use of the word 'tamper,' I mean improperly influence the jury! Of course, you understand that."

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And you said:

"I do, yes; certainly, certainly."

And Judge Miller said:

"And, of course, you understand that my reference is to — to the jury impaneled at this last term of court which might possibly be selected in the upcoming Hoffa trial?"



*Testimony of Z. T. Osborn, Jr.*

**"Mr. Osborn: Which — yes, sure. We have no misunderstanding at all."**

**You said that, didn't you?**

**A. I knew the only thing they could have been talking about —**

**Q. And you were still trying to protect Vick?**

**A. And continued to, Mr. Hooker, until you got us the courtesy of the information that Vick had come to me with a tape recorder on his back two times. And then I immediately undertook to correct it, take it on myself to explain what I had done.**

**Q. Well, isn't it true, Mr. Osborn, that you did not tell any of the facts about it until you know and heard that tape recording, and you have never on any of these matters told any fact about it that wasn't on the recording?**

**A. Well, now, that is not true, Mr. Hooker. Your record on disbarment will show that, that I made a complete state-**  
**P. 810**

**ment about it before ever hearing the tape recording, before ever being shown any affidavit by Vick, or any other thing. I made that statement, which they read, and which I testified to the truth of again today, which they read to you, and then they played the tape recording, and when they played the tape recording it did give the facts that I have said.**

**Q. Well, with all that searching examination, though, that Judge Miller conducted on the disbarment proceeding, did you ever tell anything about the Harry Beard incident?**

**A. I was never asked about the Harry Beard incident. And the Harry Beard incident wasn't mentioned.**

**Q. Well, here you knew when you were there talking to this judge, and talking to him about your conduct as a lawyer, that this man approached you three or four times**

*Testimony of Z. T. Osborn, Jr.*

about buying jurors and you never said a word about it, did you?

Q. And wasn't the reason you didn't say a word about it and didn't tell the judge a word about it is because it wasn't on that record where it could be proved absolutely?

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MR. NORMAN: Well, are you asking him a question?

MR. HOOKER: Yes.

MR. NORMAN: Or the jury, Mr. Hooker?

MR. HOOKER: Yes, I am asking him. I am following your example of looking at them when asking it. You brought it up.

Q. And of course, there was never anything up there being in any record, and you never mentioned anything of the Beard incident at all?

A. You-know, the last thing I did, Mr. Hooker, before going to Judge Miller and making this disclosure, I went to my attorney, Mr. Norman, and I said, "Now, Mr. Norman, these representations have been made to us by Mr. Hooker," and asked him what to do. "Am I to keep his confidence or am I to — let's say he should say something about Beard. Should I volunteer about Beard?"

And Mr. Norman said, "You must keep his confidence."

I went ready to volunteer about Beard. But because of some things that have not been presented to the jury, made an error and not volunteered about Beard.

My understanding was that I would have been asked about Beard, and that otherwise I would violate the confi-

P. 812

dence. That is what happened.

Q. Then on this same occasion, didn't Judge Miller say:

"Well, I think —"

MR. NORMAN: I didn't understand.

*Testimony of Z. T. Osborn, Jr.*

Violate whose confidence?

A. Mr. Hooker's confidence.

MR. NORMAN: Yes, sir.

Q. My confidence, when I undertook to give you all the information I had at my disposal about our file?

A. Mr. Hooker, I mean your prosecution — as to control of the prosecution, and how if I would make the statement I wouldn't be prosecuted, and how that I must cover certain things. That is confidence I am talking about.

Q. Well, now, Mr. Osborn, since you brought it up, I didn't ever have any conversation with you. I am supposing you are referring to a conversation I had with Mr. Lansden and Mr. Denny and Mr. Norman that has been developed here in the absence of the jury and the Judge has already passed on there?

A. Yes, sir, Mr. Hooker.

Q. But, since you brought it up, is it your understanding that my proposition was if you would come down here and tell the judges the whole truth, that I would do what I could

P. 813

to help you, wasn't it?

A. Well, it went further than that. But you said if I would come —

Q. Well, went further than that — you wouldn't be indicted?

A. Yes, but I did come and did tell the whole truth, but here I am indicted.

Q. Well, Judge Miller found in his opinion you did not tell the whole truth, didn't he?

MR. NORMAN: We except to that, if Your Honor please.

Mr. Hooker knows it is improper, highly improper, and as a lawyer he knows it, that he shouldn't have made the statement and —

THE COURT: Now, gentlemen —

*Testimony of Z. T. Osborn, Jr.*

**MR. NORMAN:** And ask the jury be instructed to disregard it.

**THE COURT:** Just a moment.

The Court, as Mr. has pointed out, has passed on that proposition.

It is unfortunate that it has been brought out before the jury.

The Court had made its ruling, has ruled it is not a matter with which the jury is concerned.

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Am I correct about that or not?

**MR. NORMAN:** Yes, sir. And we think the jury should be instructed not to consider the remark of Mr. Hooker, and Mr. Hooker should not mention it again. He knows—

**MR. HOOKER:** Well —

**THE COURT:** Well, defendant himself has opened it

**THE WITNESS:** No, sir. He asked me why I didn't tell about Beard, and I was telling.

**THE COURT:** Well, we are all agreed that should not be discussed in the presence of the jury.

**MR. HOOKER:** Yes, sir.

**THE COURT:** It is a legal matter the Court has passed on, then. We are all lawyers here, and we know a little something about these things.

Go ahead.

**MR. NORMAN:** Exception.

**Q.** All right. I want to ask you this question, since you brought it up about not wanting to interfere with my situation in the case.

After you had this hearing down here with the judge and told what you did about it, did you or anyone at your

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instance ever call on me to do anything about it!

A. Yes, Mr. Hooker.

Q. Who?

A. Mr. David A. Alexander. After I had made the disclosure and been disbarred, and then the Grand Jury was to be summoned, then after Mr. Denney and others said, "Well, there is no point in going to Mr. Hooker," Mr. David Alexander, one of your friends, came to me and said, "I want to — I want to try again on this matter. Will you let me go to Mr. Hooker?"

I said, "Well, we will have to get Mr. Norman's permission."

And we got Mr. Norman's permission.

Mr. David Alexander, according to information that he gave me, called you. He made an agreement. He came back and had me make a written record of it.

THE COURT: Just a minute, now. Are we still on the same thing?

THE WITNESS: No, different subject.

MR. NORMAN: No.

MR. HOOKER: Not the subject that was ruled on by the Court.

THE COURT: Go ahead.

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A. (Continuing) The proposition was this. If I would submit to cross-examination about Beard incident, and that about Virgil Riley, Mr. Hooker would act to prevent indictment.

I said, "Dave, I am delighted to do that. I will write Mr. Hooker a letter."

So I wrote a letter.

Mr. Alexander said, "No, no," because he always said I am slow. "I will write it."

Mr. Alexander wrote it. I signed it.

*Testimony of Z. T. Osborn, Jr.*

MR. NORMAN: Wrote a letter to whom?

A. (Continuing) And I sent a letter. Heard from Mr. Hooker six days after the indictment, "When you will submit to cross-examination." Simply, Mr. Hooker, that is the way it happened, Mr. Hooker. That is how, there.

Q. There was never — and were you never cross-examined?

A. We offered.

Q. This — you referred to a letter. Wasn't the agreement with Mr. Alexander that still if you would tell the facts about the situation, I would do what I could to help the situation?

A. I have told you what Mr. Alexander said to me.

MR. HOOKER: All right.

A. (Continuing) Mr. Alexander is out there. He can  
P. 817

testify what you did there.

Q: Didn't Judge Miller say this:

"Well, I think we should go this far at this time, Tommy, and tell you that — that — as we have already pointed out — this evidence is substantial, and it indicates that all improper attempt has been made on your part to contact and improperly influence a juror by the name of Elliott."

A. Yes, sir, he asked me that.

Q. And then you said:

"Well, it is — As I say, I do not — What I wanted is some idea as to the source. Now —"

Judge Miller says:

"Well, if you —"

And you interrupted:

"It is —"

Then Judge Miller says:

"If you've had no discussions whatsoever or conversations in this regard, which is what you have stated —"

*Testimony of Z. T. Osborn, Jr.*

"Mr. Osborn: Well, I have not had any conversation or any discussion with anyone as to any effort to contact  
P. 818

Elliott or any other person on the jury."  
Is that what you told him?

A. Yes. I had committed myself to that with my first question, and I stayed right with it, to my shame. But that is exactly what I did.

Q. And even after he had called your attention directly to the proposition that it was discussions and efforts to corrupt a man named Elliott, you denied it?

A. I did. And it was no surprise that he mentioned Elliott. See, that had been in mind with the first question.

Q. Well, you knew before you got down there he was going to ask you about Elliott?

A. I knew the only thing that might have been done was something this boy might have gotten into after I had talked to him last. And that was my only involvement.

Q. And you — you determined as a man — a lawyer of twenty years experience, "I will tell a falsehood, protect the boy —" as you refer to him, whom you now say is trying to entrap you? That is the reason you did it?

A. That is right, that is the reason I did it.

Q. Then didn't you say on this same occasion:

"Mr. Osborn: I do repeat the statement that I have made to your Honor, that I have not engaged in any effort  
P. 819

to improperly influence any juror or prospective juror."  
Judge Miller says:

"And that would include Elliott?"

And you say:

"It does. Certainly."

Judge Miller says:

"And anyone else?"

*Testimony of Z. T. Osborn, Jr.*

And you said:

“And certainly anyone else.”

You said that?

A. Yes, I did. As I explained to Judge Miller at the time of the hearing, I had gone from good judgment to no judgment to bad judgment. I had gone from — in the course of that time, I had gone from one place to where that these things were done which are really — and at the time were irrational, for this proposition, for example, now, promising somebody ten thousand dollars, when you are trying to strike the whole panel of the jury, when you know that by the reason of the service he is giving — hanging juries and things like that, assuming you would have taken a union man — just like you say that, I was still in here — irrational. I had gone from good judgment to no judgment to bad judgment.

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ment to bad judgment.

But that is what was in my mind when I was there.

Q. Now, after this hearing on November 15th, you came back down here on November 16th, you and Mr. Norman and Mr. Denney, I believe, to see Judge Gray?

A. Yes, sir.

Q. And that was the meeting that you stated you called me and maybe Mr. Norman — my recollection is you both did — whatever it was, and I finally got in touch with Judge Gray and arranged the meeting late one Saturday afternoon, wasn't it, Mr. Osborn?

A. Yes, Mr. Hooker. Yes, sir.

Q. Yes, sir. And you and Mr. Norman and Mr. Denney came down to Judge Gray — I wasn't present. Was anybody else present except Judge Gray and the court reporter?

A. That's right.



*Testimony of Z. T. Osborn, Jr.*

Q. Then on that occasion, on November 16th, Judge Gray said:

“And it is further my understanding that you have, since yesterday afternoon, made attempts to contact Mr. Robert D. Vick.”

And you said:

“Yes. Immediately after leaving, I — as I — I

P. 821

think I told you Honors I would — I immediately began undertaking to contact all of the persons who had done any work for me — among them, Mr. Vick.

Mr. Denney: Investigators.

“Mr. Osborn: Yes, all of the investigators.

“Judge Gray: Had Mr. Vick done any work on my jury panel, Mr. Osborn?”

Answer:

“No, he had not. He had done work only on the ones who were assigned to Judge Miller.”

Now, is that the same Mr. Vick that you tried to get in touch with after the first meeting with Judge Miller, claiming that now he entrapped you?

A. Yes, and until really Judge Gray revealed that he had been to my office with a tape recorder, I had refused to even think that I could be in any serious trouble, but that simply he had gotten himself in — the possibility was suggested by one of the attorneys, and I insisted it could not be, that it could not be.

Q. Then on October — on November 19th, that is when you came back and had a hearing and — had a disbarment hearing, and I will ask you whether if this didn't oc-

P. 822

cur:

Judge Miller said:

*Testimony of Z. T. Osborn, Jr.*

"Did you listen to the tape with me just a moment ago which purported to be a recording of a conversation between you and Vick on November 11?"

The answer:

"I did."

A. Yes, that took place, midway in the hearing.

Q. Yes, sir. And that is the same tape these ladies and gentlemen of the jury listed to with the ear phones?

A. Yes.

Q. And Judge Miller said:

"Did you follow that with the transcript?"

And you said:

"Yes, I did."

In other words, you took the transcript, like the people there — like were passed to each member of the jury, and as you listened, then you followed with what they had written down?

A. Yes, sir.

Q. Then I believe Judge Miller says:

"Which I believe is marked in this proceeding as Exhibit D?"

You said:

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"Yes, Your Honor."

Judge Miller says:

"And could you detect and make out the substance of this transcript from that recording?"

And you answered:

"Yes."

Judge Miller said:

"And you would say then from having listened to the tape that this is a substantially correct reproduction of what took place?"

A. Yes, sir.

*Testimony of Z. T. Osborn, Jr.*

Q. And you said:

"It is substantially correct. There are things that I could — yes.

You said that, didn't you?

A. Yes, there are some things in the transcript — these are immaterial things, but in one place I think they have got my voice beside something Vick says, and so on. But in sum and substance it is a correct transcript.

Q. For all practical purposes it is substantially correct?

A. Yes, sir.

Q. (Reading)

"You could follow this that you see?"

You said:

"I could follow.

P. 824

"That you see on the transcript, you could follow it on the tape?"

Mr. Osborn said:

"Yes."

Now, Judge Miller asked you this question. And I will ask you if it is correct, and if you made this answer, and so on, in explanation for it.

"Judge Miller: You notice here in this recording transcript that after you got back into your office with Vick that the first question asked was by you and you said, 'How far did you go?' You made that statement? How far did you go? Well, you knew, apparently from that question that would indicate that you had expected him to contact this juror before. Isn't that right?"

And you said:

"Well, I have told Your Honor about a conversation of the 8th."

In other words, what you meant to answer there — what you said there was that you did know on the 11th that

*Testimony of Z. T. Osborn, Jr.*

A. He might have gone to ———

Q. Might have gone and this is on this conversation you had had with him on the 8th, is that correct?

P. 825

A. Well, you say on the 8th. While I told him not to go, that he was rushing it, he told me he was going. And I said to him, "Don't go too far." That is — well, as Judge Miller pointed out, I had at that time on the 8th been led to expect that he would go back to this cousin.

Q. Then Judge Miller said:

"Of the 8th, yes."

Then you said:

"But I don't remember. I don't know why I should have started out that way. I started, I thought that the conversation sarterd like this.

Well, I have told Your Honor my recollection of it."

Judge Miller says:

"Of course, the conversation is here on tape and it speaks for itself, doesn't it?"

And you said:

"Yes, it does."

A. Umhum.

**CROSS-EXAMINATION**

**(FURTHER)**

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BY MR. HOOKER:

Q. Mr. Osborn, do you know a Mr. Rollins and Mr. Nolan?

A. It is not Rollins. I believe it is Robbins.

Q. Robbins. Robbins?

A. Loren Robbins.

Q. Do you know him?



*Testimony of Z. T. Osborn, Jr.*

A. I have met him, yes, since this came up.

Q. Did you know him before May 5th?

A. Yes.

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Q. And did you know Nolan before May 5th?

A. I had met them, yes.

Q. And did you know Nolan before May 5th?

A. I had met them, yes.

Q. Where did you first meet them?

A. After I had, as I outlined, insisted that I would not pay Vick one dime, and after Childress had told me that he was then going to take it to the union officials, I called and tried to see whether or not the people in Indianapolis would be friendly enough to tape-record whatever conversations were had between them, Vick and Childress.

I first met them, then, let's say approximately a week after those telephone calls.

I had a call from one of the attorneys in Chicago asking me to come up there. And I then met with Nolan and Robbins for the first time there.

Q. In Chicago?

A. Yes. And they then had a tape recording, the first in a long series of tape recordings which they took of the approach that Vick made to them.

Q. In other words, they already had some tape recordings at that time?

A. Before I ever met them, yes.

Q. But that followed your call in which you asked them if they would cooperate and get tape recordings?

A. In which I asked others to see if the Indianapolis

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people would make tape recordings, after I had the approach from Childress that the approach would be made.

*Testimony of Z. T. Osborn, Jr.*

Q. Who took the tape recordings? Who handled the mechanical end of it?

A. As I understand, the first one was taken after — the first one was taken by Shirley Green and Loren Robbins and Nolan on some equipment that they very hurriedly got together.

Now, the next recording was taken, after we had that one, on some much finer equipment which I got sent down by Bernard Spindel, who is an electronics expert.

But on each of the occasions, the actual manipulations of the machines that recorded Vick's conversations, except on the May 5th meeting, those were done simply by Robbins and Nolan. They operated the machines themselves.

Q. Were the machines obtained from Spindel the first machines?

A. No. No. And really what I think Spindel did, when he went in he told them to buy a good recorder, one that would be, you know, superior in that quality, a German machine called Uher's, or something.

Q. And they did buy one?

A. Yes, they did get one.

Q. Now, the recording set up May 5th in Nashville, the

P. 829

Holiday Inn, that was handled by Mr. Spindel?

A. Yes.

Q. It was his equipment and he handled the mechanical end of it?

A. Yes.

Q. Is that the same Bernard Spindel that testified in Chattanooga in the jury trial against Mr. Hoffa and others?

A. That is the same Bernard Spindel who testified in that case.

*Testimony of Z. T. Osborn, Jr.*

Q. Yes. And he has testified in other cases in years past in which Mr. Hoffa has had an interest, has he not?

A. I don't know about that. I know that he did testify in at least one case because he was later put on trial with Mr. Hoffa there on a charge of tapping the telephone wires out there at the union headquarters.

Q. Yes. And who paid — did the Teamsters pay the expenses of this recording?

A. No, sir, I have had to pay the expense of it.

Q. And this Mr. Robbins and Mr. Nolan are both Teamsters?

A. Yes, sir.

Q. And also this man here —?

A. Childress.

Q. Childress — he is a Teamster?

A. Well, there is a difference. Robbins and Nolan are  
P. 830

both Teamsters officials. Childress is simply a Teamster member by virtue of the fact that taxicab drivers in that city are organized by the Teamsters.

Q. Teamsters Union?

A. Yes, sir.

Q. But Robbins and Nolan are officials in — what is that — Local 135 at Indianapolis?

A. I think that is the number, yes, sir.

Q. Yes, sir. And they were the ones that were present when these recordings where — a portion of the transcript of which has already been read during the examination of Vick?

A. Yes, sir.

Q. And that portion of the transcript that was made here in the Holiday Inn was made by Mr. Bernard Spindel?

A. Yes. Yes.

MR. HOOKER: I want these copies —

*Testimony of Z. T. Osborn, Jr.*

Your Honor, I am going to ask some questions about this transcript, and I think it will save time and be clearer if I may be permitted to pass these back to the jury.

MR. NORMAN: What is it?

MR. HOOKER: Exhibit number 12 that they have seen before, the November 11th recording.

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MR. NORMAN: All right.

MR. HOOKER: Give one to Mr. Osborn there, too. It might make it easier for him.

(Exhibits passed to jury.)

Q. Now, Mr. Osborn, as I understand it, you listened to this recording and read this transcript, and then you have stated that except for some immaterial little things here and there that it is substantially accurate?

A. Yes, sir, Mr. Hooker.

Q. Now, when Mr. Vick came in, you asked him: "How far did you go?"

A. Yes, sir.

Q. What did you mean by that?

MR. HOOKER: I am referring, ladies and gentlemen, to the — these pages don't seem to be numbered, but it is the third page near the middle. And this "How far did you go?" — it is about six lines from the bottom of that page. And it is marked page 2 at the bottom. I see that, now.

Q. You see that?

A. Yes, sir.

Q. What did you mean by that?

A. Well, this followed the meeting of the 8th. In other

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words, this was the next time that I talked with him after the meeting of the 8th.



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At the conclusion of the meeting of the 8th, I had told Vick that he was rushing me on the thing, not to go to his cousin. And he had said something to indicate that he would see him.

So when he came back to see me, I think that what was uppermost in my mind was how far he had gone.

Q. How far he had gone. That is, how far he had gone with Elliott?

A. With Elliott, yes.

Q. And he says:

"Well, pretty far."

You said:

"Maybe we'd better ———"

"Whatever you say. Don't make any difference to me."

Then Vick says:

"I'm comfortable, but this chair sits good, but we'll take off if you want to, but ———"

He meant by that you might go outside in an alley or somewhere to avoid any detection?

A. Possibly so.

Q. Is that what you understood him to mean?

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A. What did I take it to mean by ——— what he meant?

Q. On some previous occasion when he had been there, on the 8th, as you have previously stated, you did you outside of the office and up Third Avenue a section there into an alley to talk?

A. That is true.

Q. To an alcove?

A. That is true.

Q. Then:

"Did you talk to him?"

And Vick said:

"Huh?"

*Testimony of Z. T. Osborn, Jr.*

And you said:

"Did you talk to him?"

And Vick says:

"Yeah. I went down to Springfield Saturday morning and talked to him."

And then you said:

"Elliott?"

And Vick says:

"Elliott."

A. Yes, sir.

Q. In other words, you were anxious to find out if it was this man Elliott that he talked to?

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A. Yes, I had asked him not to. He had indicated that he would, even though I was asking not to. And so I asked him had he talked with him.

Q. You first asked him if he had talked to him?

A. Yes.

Q. Then asked him if he had talked to Elliott?

A. Right.

Q. And you tell these ladies and gentlemen that this man had entrapped you into that, misled you into that?

A. Yes. And I have discussed the way that he pretended and persuaded that he could and was presenting it to me.

Now, I know that was ——— let me say that he was throughout, just as in this recording, he was presenting to me things that he had done, he was saying that he had done things, he was presenting to me things that he had done, not presenting to me things that I had asked him to do, but, rather, things that he had done. And so I am inquiring what he has done.

Q. Then on page 3, you asked him:

"Is there any chance in the world that he would report you?"

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And Vick answered:

"That he would report me to the FBI? Why of course, there's always a chance, but I wouldn't have got into it

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if I had thought it was very, very great." And then the recording shows that you laughed. Were you then being continually, you say, entrapped by this man or misled?

A. Well, yes, the process of entrapment was continuing. But it had continued — even though he had said: "I am very close to this man; he is my cousin; he will talk to me," there was still a concern in my mind — uppermost in my mind that he would get himself into trouble and he would be reported. And I asked him again — this may have been the fifth meeting about — and I asked him again is there any chance you would be reported.

Q. And you said:

"Yeah, I do know. Old Bob first."

Vick says:

"That right. Don't worry. I'm gonna take care of old Bob and I know, and of course I'm depending on you to take care of Old Bob if anything, if anything goes wrong."

You said:

"I am. I am. Why certainly."

A. Yes, sir. And may I answer that?

MR. HOOKER: Yes, sir.

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A. The answer is, Mr. Hooker, what I have tried to make plain with reference to these questions that Mr. Hooker asked me about, my statements to the judges on the 15th, I realized, see, what a horrible thing it was that I did on the 15th, and it has been brought to bear upon me my dis-

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barment, and disgrace for my wife and all my family. And yet I wouldn't have betrayed him, and he knew that. And I assure him of that. That is what that is.

Q. Well, then, in that connection, and not only on the 15th, but you went back on the 16th and Judge Gray told you that they had a recording — this is about Elliott — you didn't tell him then, did you?

A. No. But I told my lawyer then. I said, "All right. See, it is incredible to me," I said, "and yet I have been entrapped. And now the only thing that I can do is go back, and, as quickly as I can, correct the lie that I have told and make the full disclosure, and that is what I thought I should do."

Q. And now, Vick says:

"Now, we had coffee Saturday morning and now I had previously told you that it's the son and not the father." In other words,

"Now, we had coffee Saturday morning and now I had  
P. 837

previously told you that it's the son."

Q. You say:

"It is?"

"Yes, and not the father."

In other words, you were in doubt at first whether of the two Elliotts it was the father or son that was on the jury?

A. Well, here's what is the fact on that. Now, he had told me that this was a cousin that was on the jury, that he was very close and all there.

In the papers that were filed by the Government of their statements taken from him, they show that Vick was mistaken as to which person was on the jury.

Now, I didn't know that, and I never checked that. I had never checked that. I hadn't really been going to get into it with him.



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But he has corrected that, now, perhaps at the instructions of the FBI or whoever is coaching him on how he feeds me my words.

He is taking it back on that tape recording now. And I should have caught it, honestly, for him to come up and substantially say, now, it isn't even the man you have been talking about. But I didn't.

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Q. Now, sir, if you are through, in your view of your answer, the next — I wish to pass to this: And this is Vick:

"The son is Ralph Alden Elliott and the father is Ralph Donnal. Alden is — Marie, that's Ralph's wife who killed herself. That was her maiden name, Alden, see? Anyway, we had coffee and he's ben on a hung jury up here this week, see?"

And you said again:

"I know that."

A. I am just turning — just turning the conversation off about that.

Q. You say you know the man — that he had been on a hung jury, the Elliott he was going to see?

A. All that was — really had registered with me was Ralph A. Elliott. I knew that was the name of a juror. I hadn't made at that point any investigation of people in that particular county. I hadn't assigned the investigation, because, actually, we have fellows over there, and without spending any money on it, all I would have to do is pick up the telephone and Mack O'Brien or somebody else — they would tell me whether the man is white or black, that

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is correct.

Q. That is what you said then, said:

"I know that."

*Testimony of Z. T. Osborn, Jr.*

A. Well, I meant, when I said, "I know that," well, that is not important, or something like that.

Q. And you did know the man you were interested in was — was Elliott that was already on the jury here and had hung one jury?

A. Yes.

Q. All right.

A. I knew that. And so —

Q. All right.

A. (Continuing) When he gave me this other information, I said, "I know that," rather than drawing him in some conversation about it.

Q. All right. Then Vick says:

"Well, I didn't know that but anyway, he brought that up so he got to talking about the last Hoffa case being hung, you know, and some guy refusing \$10,000 to hang it, see, and he said the guy was crazy, he shouldn't have took it, you know —"

A. Should have took it.

Q. "—should have took it, you know, and so we

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talked about and so just discreetly, you know, and of course I'm really playing this thing slow, that's the reason I asked you if you wanted a lawyer down there to handle it or you wanted me to handle it, cause I'm gonna play it easy."

Then you answered:

"The less people the better."

Correct?

A. Yes, sir. And in order to understand the significance of this, you have to realize that on the first occasion after he came back and pretended to have talked to his cousin, he reported that his cousin said about the Hoffa case that the only thing he thought about it was that Tippens was a

*Testimony of Z. T. Osborn, Jr.*

fool, that if he had been him he would have taken the ten thousand dollars.

And then we have — it is at this point, you see, that I had this discussion with him about the ridiculous nature of the offer, and the way that was supposed to have been done, and told him of my belief in Medlin's probable innocence.

Q. What did you mean by "The less people the better"?

A. Well, he has asked me if I want somebody else to act there. Rule one on a conspiracy is if you can, don't take anybody in on it.

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Q. In other words, the less people you have got to know about it, the less chance of being caught?

A. That is right. That is what I was saying.

Q. Then Vick says:

"That's right. Well, I'm gonna play it slow and easy myself and, anyway, we talked about — something about five thousand now and five thousand later, see, so he did, he brought up five thousand, see, and talking about — about how they pay it out; you know, and things like that. I don't know whether he suspected why I was there or not cause I don't just drop out of the blue to visit him socially, you know. We're friends, close, and kin, cousins, but I don't ordinarily just, we don't fraternize, you know, and — so he seems very receptive for —"

I don't know what that word is, looks like — I can't make out the pen —

"— or to hang the thing for five now and five later.

Now, I thought I would report back to you and see what you say."

And then you answer:

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"That's fine! The thing to do is set it up for a point later so you won't be running back and forth."

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Now, is that all a part of this entrapment that they gave got you into?

A. Yes, sir, and ———

Q. Set it up for a point later——?

A. Yes, sir. This is the culmination and end of the entrapment.

Q. What did you mean by "Set it up for a point later so you won't have to be running back and forth"?

A. Well, now, first let me answer this, please, Mr. Hooker. I had told him on these earlier conversations, first, I had asked him not to bring the case up with the juror, and secondly, I had told him that if the case was brought up to not under any circumstances make an approach to the man, don't offer him money. And then later, after I had begun to go along and into it, I had warned him that "If the man brings it up, and if the man approached you, so to speak, don't you bring up money to him. It would be — let him bring up money, if money is brought up, to you."

Now, what I mean by, in other words, set it up for a point so you won't be running back and forth, is just this, that I am saying that it is a deal, and then is — the thing to

P. 843

do is close it so you won't have to be running back and forth.

Q. Make it final?

A. Yes, sir.

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Q. Make it final, make the situation final, that's it, wasn't it?



*Testimony of Z. T. Osborn, Jr.*

A. That's right.

And, in addition, I am wanting this man not to be running back and forth. I am fearful that he is going to get himself and his cousin into trouble.

Q. In other words, you realize and agree as a lawyer that this was a final understanding to fix a juror?

A. Well, no, it's not a final understanding to fix a juror.

Here is what I am — Here is where we actually bring it to a stop, here is where we actually finally bring it to a stop: I point out to him that we don't know — we don't even know when the case is going to be tried. There is no trial date set. We certainly don't know that this man is going to be on the jury. And so I ask him not to return, "Don't go back up until at least you know when the trial date is set."

Q. Well, hadn't there been a tentative understanding about a trial date at this time, and counsel were required to report back at a certain time to see if there would be a trial in December?

A. No, sir, no, sir. At this time, at the time this conversation was had, here is the situation: We had obtained in  
P. 845

August a stay order preventing any proceeding, or the fixing of a trial date. At the time that this conversation occurred we are on a petition for certiorari to the United States Supreme Court, and the United States Supreme Court has refused — the government undertook to cut off the time even that we could have on certiorari, but the United States Supreme Court has refused to do that, and has our petition for certiorari before them.

Now, the earliest thing that could happen about the case would be that on the Monday following the Supreme Court might reject our petition for certiorari, you see, on the Monday following.

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Or if they grant our certiorari, if they permit us to orally argue it, then the case isn't going to be tried for five months, and this man, he would have finished his jury service, and been discharged; and a new jury would have been in.

As a lawyer, of course I knew that the earliest — I knew the minimum time.

And this certiorari was not actually ruled upon until Monday the — Well, let's say this: after I had been cited, and had come down and had the disbarment order handed to me, on the Monday following that they ruled against — it would have been Monday the 18th of November — they

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did rule against the certiorari, and even though I had not yet been heard, and even though both of the judges knew that I would be disbarred, Judge Gray immediately set the case down for trial on the — on a date in December.

Q. The early part of December?

A. Knowing that Hoffa would be without counsel locally within two days.

Q. And then finally the case was transferred to Chattanooga and the trial commenced over there on January 20th?

A. Over what I did.

Q. So you had a pretty good idea, didn't you, Mr. Osborn, as a very capable lawyer, that this case was going to be tried before the jury that was under consideration at that time, didn't you, if it wasn't transferred to another jurisdiction?

A. Well, in answer to that, I would say, as a lawyer, I knew that there was a probability —

Q. That was the probability, the probability of the situation. Next —

A. Not —

Q. All right.

*Testimony of Z. T. Osborn, Jr.*

A. Go ahead.

Q. There was a strong probability that it would have  
P. 847

been tried before this jury?

A. Well, the strong probability really would have been, Mr. Hooker, that he would not have been offered the regular jury. The strong probability in the Hoffa case, we would only have taken up, let's say, with the reserve panel. That is probably what would have happened.

Q. But you had been having them all investigated?

A. For race, employment, what kind of work they did, and whether they were Catholic, Protestant, or Jewish. We had them all investigated.

Q. Then the next statement made, on the bottom of page 4, "Then tell him it's a deal."

What did you mean by that, Mr. Osborn?

A. To tell him it was a deal.

Q. You mean to tell him that the deal was all fixed, "Five thousand when you get on the jury, and five thousand when you hang it?" was that the deal?

A. That's the deal.

Q. "It's what?" Vick says, and then you say, at the top of page 5:

"That it's a deal. What we'll have to do when it gets down to the trial date, when we know the date, tomorrow for example if the Supreme Court rules against us, well within a week we'll know when the trial comes. Then he

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has to be certain that when he gets on, he's got to know that he'll just be talking to you and nobody else."

Did you say that?

A. Yes, sir.

Q. And Vick said, "Social strictly."

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And you said, "Oh, yeah."

Vick said, "I've got my story all fixed on that."

Then you said, "He will have to know where to, he will have to know where to come."

What did you mean by that?

A. Well, just what it says there.

Q. Well, he would know where to come to the courthouse to be on the jury. What did you mean, where to come to get the money?

A. Certainly. That's what I'm saying.

Q. When you said he would have to know where to come, you meant he would have to know where to come to get that first five thousand? Isn't that what you meant?

A. Certainly.

Q. Then Vick said, "Well, er —"

And then you said, "And he'll have to know when."

You meant by that, when to come for the first five thousand?

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A. Yes, sir.

Q. Vick said, "Er, do you want to see him yourself? You want me to handle it, or what?"

And you said, "Uh huh. You're gonna handle it yourself."

A. I said, "Huh uh. You are going to handle it yourself."

Q. What did you mean by that?

A. I meant I am not going to say anything.

Q. When you said "Uh huh," or whatever way you say it, you meant in the affirmative, he was going to do it?

A. I meant I wasn't going to do it.

Q. In other words, when he got to the place of where he was to get the money, and when he was to get the money, Vick was the man who was to hand him the \$5,000?

A. Yes.



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Q. Vick said, "All right. You want to know it when he's ready, when I think he's ready for the five thousand. Is that right?"

And you said, "Well, no, when he gets on the panel, once he gets on the jury. Provided he gets on the panel."

In other words, you wanted to be sure that there was no mistake about it, that he, as a prerequisite to getting this first \$5,000, he had to first get on the jury?

A. Yes, sir. Now, you understand, I am in my mind  
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doing this: I am making certain that Vick understands no trial date is set, no one knows yet when the trial date was set — will be set. No one knows when, or who will be on the jury, and that he's not going to do something until a further agreement is had.

Q. In other words, he had to know when and where, right? And he had to be on the jury before you would give him the five thousand; is that right?

A. Certainly.

Q. And then Vick said, "Yeah. Oh, yeah. That's right. That's right. Well, now, he's on the number one."

And you said, "I know, but now" —

Vick interrupts, "But you don't know that would be the one."

You said, "Well, I know this, that if we go to trial before that jury he'll be on it, but suppose the government challenges him over being on another hung jury?"

You said that?

A. Yes.

Q. Vick said, "Oh, I see."

A. Yes.

Q. And you said, "Where are we then?"

Vick said, "Oh, I see. I see."

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You said, "So we have to be certain that he makes it on

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the jury."

You meant by tht you had to be certain that he was chosen, and not challenged?

A. And also not — Here is this part of it: In the early conversations with Vick when he is insisting that he could talk with the man, pretending that he had talked with the man, I am, in those conversations, continuing in each of them to tell Vick — not in so many words — but to tell Vick that he is rushing, he is doing a vain thing, not — the time is not yet, and so on. I'm stalling along with Vick in these earlier conversations, and actually I'm following this same pattern, although going further than I had, in this last conversation.

And once again I'm bringing up this — he repeats, "He's a member of the CWA."

Q. Now, did he repeat that? I understand you to say earlier that he said something about that in a meeting as early as October 28.

A. Yes.

Q. Well, let's see about it. Vick says, "Well, now, here's one thing, Tommy. He's a member of the CWA, see, and the Teamsters, or —"

And you said, "Well, they'll knock him off."

A. I said it like this: "Well, they'll knock him off."

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Q. You mean that you already knew before this particular day that this man was a member of the union, and that they might knock him off?

A. Vick in an earlier conversation had told me that, and I had said, well, once again, "If he's a union man there's no point in talking with him, the government will challenge

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him." And he has advanced this same argument. Now, he knows — but of course I don't know — that his earlier tape recordings are — have failed, and Vick is repeating things here in order to get them on a final tape recording. That's what Vick is doing.

Q. And you claim now that you had known since October 28th that this juror Ralph Elliott was a member of the CWA, or the Teamsters one, and that they might excuse him for that reason?

A. Well, I am claiming that from the early time, on October 28, the only thing I think that really happened is this: He told me he had a cousin, he said, "I would like to go see him. I can talk to him." I said, "Don't go." Now, I think it was on maybe a meeting within a day or so after that that he says this business about my office being bugged, "Come out," and at that point he advances the argument further that he wants to go and see this cousin. And I think it's at that point that he argues that he's a union man,

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and then I'm saying, then I said to him, "Well, the government will certainly challenge him. They will not accept some union man on a trial for Mr. Hoffa." And it's there that he first comes up with it is a CWA, which is a union that's in an argument with the Teamsters Union, over this fact: many people in the CWA wanted to join the Teamsters Union.

Q. The CWA is the Communications Workers of America, is it not?

A. Yes. They had a big election about it, and of course Vick is arguing that, and does again in this conversation, that since it's the CWA the government would take him.

Q. Now, getting back to the proposition of whether you had discussed this before, as you suggest, on October 28, I call your attention to this question and answer, or this

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statement and answer. Vick says: "Naw, they won't. They've had a fight with the CWA, see?"

And then you answered, "I think everything looks perfect."

What did you mean by that?

A. "I think everything looks perfect," I mean by that I'm not arguing further with Vick about it. I'm going ahead agreeing with him about it.

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Q. And you are agreeing that everything looks perfect as far as getting this man on the jury and getting this money to him? That's what you referred to?

A. What I'm doing with this sentence is, I am concluding the conversation with him. I'm saying, "All right, everything looks perfect."

Q. That means the deal you are speaking of, that you discussed earlier, that everything looks perfect?

A. Yes. And it also means this, Mr. Hooker, if you think back on it, it means that I am no longer, after all of these meetings and so on, I am no longer persisting in the arguments and the instructions that I had given him earlier. He has by that time led me along to where that I am doing just what you heard. That's what it means.

Q. And everything looked perfect.

And then Mr. Vick said, "I think it's in our favor, see. I think that'll work to our favor."

And you said, "That's why I'm so anxious that they accept him."

You mean by that that that's the reason you were so anxious that they accept Elliott on the jury in the Hoffa case?

A. With my previous answer, Mr. Hooker, "I think everything looks perfect," you will see that I have at that

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point abandoned argument. At that point I have abandoned these arguments to Vick that they won't take him, but challenge him, and so on. And it's only after these things are done that I come back to the point that he is not to do anything, that the trial is not known, and so on.

Q. What did you mean when you said, "That's why I'm so anxious that they accept him"?

A. I'm meaning to convey to Vick this: You don't have to argue with me any further about it.

Q. Well, did you mean that you were so anxious that he be accepted on the jury, and that's a fair meaning of the word, Mr. Osborn?

A. That's what the word means.

Q. And that's what you said?

A. Yes, sir.

Q. And Vick says, "I think they would, too. I don't think they would have a reason in the world to. I don't think that I'm under any surveillance or suspicion or anything like that."

And you said, "I don't think so."

A. I'm agreeing, you see, by this time, with everything he says.

Q. Vick says, "I don't know. I don't frankly think, since  
P. 856

last year, and since I told them I was through with the thing, I don't think I have been. Now, Fred——"

And then you interrupt, "I don't think you have, either."

You are agreeing he is not under surveillance?

A. Yes, I am agreeing with him.

Q. Vick said, "You know Fred and I may not —— he may be too suspicious and I may not be suspicious enough. I don't know."

And you say, "I think you've got it sized up exactly right," still agreeing with him.

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Vick says, "Well, I think so."

And you say, "Now, you know you promised that fella that you would have nothing more to do with that case."

Vick says, "That's right."

Now you are still agreeing with him?

A. Well, at that time that, I am agreeing — No. At this point you see I am returning slightly to myself, and I am — I'm trying to bring my mind to what he's done, and what he's about to do, and I'm trying even at this point to protect him to be sure he has in mind things that would protect him, particularly against the loss of his job. That is my concern principally with him. And so I am — I am then turning the conversation from this business of agree-

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ing with him, I'm turning the conversation to this, that he can live with what he can live with what he has told me as been extracted from him as a promise, a condition upon which he will keep his job, that he is going to get fired anyway.

I am now turning to the proposition, reminding him that he has promised Sheridan that he would not take part in any investigation for me.

And then I'm going on, if you will watch, I am reminding him that what he has done is check the jurors in Judge Miller's court, and not the jurors in Hoffa's court — in the court that Hoffa would be in.

And, as you see, then he says, "Well, there's another thing." The conversation really is turning then to this other area.

And then I go on to remind him once again that all he has been asked to do that could involve him in some punitive action by the department, that he has been asked to check, "Blank, blank, blank, blank church affiliations, back-

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ground, occupation and that sort of thing on those that went into Miller's court.

Q. "You didn't even touch them. You didn't even investigate the people that were in Judge Gray's court."

A. Judge Gray's court.

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Q. That's right.

A. And he realizes, he understands this conversation, and he knows it relates back to this other conversation. He comes right along, he says, "Well, here's the thing about it, Tommy." He's responding to the earlier conversations he hasn't reported. "As soon as this damn thing's over they're gonna kick my blank out anyway, so probably Fred's, too."

He understands the way the conversation is going.

"So I might as well get out of it what I can," he says. "The way I look at it. I might be wrong cause the Tennessean is not gonna have anything to do with anybody that's had anything to do with the case now or in the past, you know that. Cause they're too close to the Kennedys."

He is just summarizing, or capsuling.

Q. Here is the point: "All right, so we'll leave it to you. The only thing to do would be to tell him, in other words your next contact with him would be to tell him if he wants that deal, he's got it."

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Now, you meant by that, you meant Elliott?

A. Yes.

Q. The next contact with the prospective juror Elliott, to tell him if he wants that deal he's got it, right?

A. Right.

Q. And Vick said, "Okay."

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And then you said, "The only thing it depends upon is him being accepted on the jury. If the government challenges him there will be no deal."

Isn't that what you said? Am I correct? Have I read it correctly?

A. Yes. It is in the transcript.

Q. And he said, "All right. If he is seated."

And you said, "If he's seated."

Vick said, "He can expect five thousand then and —"

And you interrupted and said, "Immediately."

You meant by that —

A. Immediately.

Q. You meant by that immediately upon being accepted on the jury, if Elliott was accepted on the jury he was to get \$5,000 immediately?

A. Immediately.

Q. Who was going to put it up, the \$5,000, Mr. Osborn?

A. There wasn't anybody going to put it up.

Q. Where was the money coming from?

A. There wasn't any money going to be paid, Mr. Hooker.

Q. Well, you mean by that that all of this that you told this man, that all of it was untrue, that you never intended

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to do any of it?

A. Well, I know this, I wouldn't have taken the money out of my pocket to do it.

Q. Well, who was going to put it up?

A. There wasn't anyone going to put it up, truthfully. No one was going to put it up.

Q. Well, I understand you are claiming to the jury that you have been entrapped. Do you now say you were not entrapped, that it just didn't occur? Is that what you intend to say?



*Testimony of Z. T. Osborn, Jr.*

A. What I say is that this tape recording was a product of a series of meetings in which a police officer, an agent for the government, had pretended, you know, to be having these conversations, had been pretending, and my conduct, and what I'm saying is a result of the things that originated in his mind. Now, that's what entrapped me.

Now you're coming down to this. This tape recording you see is not the whole thing of it. If you had the whole series of the conversations you would realize that by this time, by the time that this conversation had taken place I'm in a position where I have been beaten down, and my resistance lowered, not only by what has happened with Vick, but by a long series of things.

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Now, at the time I said, "Okay, \$5,000," really I'm like agreeing with all of these things — agree, agree, agree. I am getting rid of the conversation. I am finishing with him.

Now, all through it I'm insisting to him he won't be accepted, he will be challenged.

And I say to you now, Mr. Hooker, I think that if I had had a week's rest before the trial started, if he had been offered I would have challenged him myself.

In any event, I had no plan to get him up \$5,000, and I had no place to turn to get him \$5,000.

THE COURT: Mr. Hooker, at this time I would like to ask a question. In asking this question, ladies and gentlemen, you will have no idea at all that the Court has any interest in the outcome of this case.

But in view of the testimony in the last two or three minutes it occurs to me we might have some better understanding about what's involved here in respect to this entrapment issue.

THE WITNESS: Yes, sir.

*Testimony of Z. T. Osborn, Jr.*

**THE COURT:** Which the jury will be required to pass upon.

Now, the Court has the impression — maybe this is for P. 862

Mr. Norman to answer. It may be a legal question that he would prefer to express himself on.

We have talked about entrapment throughout this trial, in particular as the question relates to the tape recording which is in evidence.

Now, you have said here that there is nothing more than that. Now, the Court has had the impression that it is the tape recording that counsel has said formed the basis for his objection to this evidence.

Now, is that it exclusively, or is there something else now that you say relates to the question of entrapment?

**MR. NORMAN:** I understand your Honor is asking the defendant a question of law.

**THE COURT:** Well, I have stated that maybe it is a question that you would prefer to answer as his counsel, so we get the answer now, in an effort to clear this up.

**MR. NORMAN:** I will be glad to say what we are insisting.

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**THE COURT:** Yes.

**MR. NORMAN:** The legal proposition is that the whole thing, from February on, when he started to reporting, that he became a government agent; that the idea of getting employed by Tommy Osborn originated in his mind, and the government agents' mind, and Mr. Sheridan's mind, and that there was a plan to get employed by Tommy Osborn so he could entrap him into a pretended offense, and that the whole thing constituted entrapment.

*Testimony of Z. T. Osborn, Jr.*

**THE COURT:** And you are saying that by reason of that there is no basis for the charge in the first count of the indictment?

**MR. NORMAN:** Yes, sir.

**THE COURT:** Are you saying at the same time that there is no other evidence with respect to that particular count in the indictment?

**MR. NORMAN:** Yes, sir.

**THE COURT:** There is no other evidence?

**MR. NORMAN:** Yes, sir.

**THE COURT:** Does that exclude the statements made in the Judge's chambers?

**MR. NORMAN:** Yes, sir.

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**THE COURT:** What does that have to do with the entrapment question?

**MR. NORMAN:** I must respectfully state that your Honor is seeking to engage me in an argument as to a legal question here before the jury, which is not proper, and we except to it.

**THE COURT:** Well, far from that, the Court is not attempting to engage in any argument. But I think it is well that we have some understanding about that before this trial goes any further.

Mr. Marshal, take the jury out, if you will, please, sir.

(Whereupon, the jury retired from the courtroom, and the following occurred out of the presence and hearing of the jury:)

**THE COURT:** I have here before me the motion made by counsel at the conclusion of the government's case, and it seems here to be a rather broad motion.

**MR. NORMAN:** Which your Honor has overruled.

**THE COURT:** Yes. Based on entrapment with regard

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*Testimony of Z. T. Osborn, Jr.*

to both counts in the incident.

Is there any suggestion of any entrapment in the proof we have heard so far with respect to the second count of the indictment?

MR. NORMAN: Yes, sir.

THE COURT: Well, what is it?

MR. NORMAN: That Beard came to his office under a subterfuge, he never expected to talk to any juror, but hoping that Mr. Osborn would be persuaded by the fact that he knew one, that if finally when the jury reported if that juror did take a stand on behalf of the defendant, he could claim that he was responsible for it and collect a sum of money from Mr. Osborn.

THE COURT: Well, it is important now, in the interest of orderly procedure here, that we have some understanding about this. The Court will have to tell the jury what the law is about this case, and the Court is wondering about these things.

MR. NORMAN: May it please the Court, may I state right here that we have requested charges on entrapment already prepared, which we expect to submit to the Court when it comes time to charge the jury. We hope they will

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be submitted to the jury.

THE COURT: Of course you will be accorded the privilege of submitting any special requests at the proper time, if you have some.

If you have some, and would like to pass them in at this time, the Court would like to see them.

But now the Court has tried to follow this proof carefully, and the Court has heard no suggestion at all with respect to this second count that there was any attempt on the part of anyone to entrap Mr. Osborn.

Now about that, Mr. Neal?



*Testimony of Z. T. Osborn, Jr.*

MR. NEAL: May it please the Court, there is absolutely no proof in the record, not one iota, of any entrapment, on the second count.

Now, I think entrapment may be a legitimate issue on the first count. I am not expressing any opinion on that. But entrapment refers to activities of government officials. Just taking the defendant's statement at face value—— Of course, that is controverted by this other evidence.

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THE COURT: Well, one point about it, on the second count there is no government official involved there.

What else?

MR. NEAL: Your Honor has got the point, obviously. There is not one iota of evidence of any entrapment or any activity of any government agent with respect to the second count of the indictment; and there are a number of cases saying expressly that there is no such defense in the law as private entrapment. So if we take the defendant's statement right now at face value, at 100 percent, without any discount —— as I say, of course, it is indirect conflict with the government's proof —— but if you take the defendant's statement at face value, what it means is that he says that Beard came to him with an idea that Osborn give him money, to go to Beard, and there is no government activity there. As a matter of fact the proof is, and it was elicited by defendant's counsel, it was elicited that the government didn't know anything about it, because Beard didn't report anything until July or August of 1963, almost a year after it occurred; and Vick brought out that he

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didn't report it until July or August.

THE COURT: I think it is well that we had this little discussion about these things.

*Testimony of Z. T. Osborn, Jr.*

The Court would like to have it pointed out by someone connected with this trial, if the tape recording doesn't form the sole basis for the alleged entrapment here, what other testimony does relate to that feature of the case?

Of course it is in the proof here that this man Vick interviewed the defendant on several occasions prior to November 11 when the tape recording was made in his office.

Is that part of it?

Where are you going to draw the line now, to say what is and what is not evidence relating to the entrapment question?

As I say, now, it is a question which will be submitted to the jury; and, incidentally, the burden will be on the government to show beyond a reasonable doubt that there was no entrapment.

I throw that out for what it is worth at this time, in an effort that we may get this case on the road.

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During the hearing, out of the jury's presence, relating to this entrapment question the Court made statements to the effect that the burden was on the defendant, I believe, to establish inducement, but the law is not settled at all on that — I am talking about the burden of proof — the law is not settled on that issue, and the Court is inclined to think now that the entire burden is on the government to show beyond a reasonable doubt that this evidence was not obtained by entrapment.

MR. HOOKER: Your Honor, may I just say this one thing: Part of the burden of my cross-examination was that I thought we got into an area where Mr. Osborn was really saying that he was entrapped, and then saying that he didn't intend this anyway, never expected to go through with it at all. My understanding is that before you can

*Testimony of Z. T. Osborn, Jr.*

advance the defense of entrapment, there must be an event that you were trapped into.

MR. NORMAN: I don't think that is the whole thing, at all.

MR. HOOKER: You are not entitled to take both horns of the dilemma.

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THE COURT: This entrapment doctrine relates to evidence, the reception of illegal evidence.

Now, I have said already it will be submitted to the jury under proper instructions, and if the jury decides this tape recording was received in evidence illegally, or is not valid evidence, then will not the jury be called upon to say whether or not there is other evidence of a substantial nature to support the charges in the first count of the indictment?

MR. NEAL: No, your Honor, I might respectfully disagree with you. It is a jury question. If the defendant comes forward with evidence, some evidence that there was entrapment as to a particular count, then the Court must charge on entrapment as a defense. But that has nothing to do, as I understand it, your Honor, with the legal question of the admissibility of the evidence.

In other words, the evidence has been admitted based on a hearing. Maybe it is a matter of semantics.

THE COURT: Maybe that is it. Entrapment is spoken

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of as a defense, and frequently it is a defense. For instance, where there is no other evidence, and the government cannot travel without that evidence which has been obtained through entrapment, then the case falls of its own weight. But here you have now additional evidence, in the form of statements made to the judges, and which is of a

*Testimony of Z. T. Osborn, Jr.*

rather positive nature, it seems. In other words, would entrapment with respect to this tape recording invalidate the whole count?

**MR. NEAL:** Well, your Honor, my understanding is you go back to the original commission of the offense. If, as was referred to, and as was reported to the government, and as testified by the witness Vick here, if the first time, on November 7 — now, the witness Vick testified that on November 7 he went to the defendant Osborn and said, "I've got a cousin on the jury," he testified that thereupon Osborn said, "Go to him; sit down with him, talk to him, get him on our side, we want him on the jury," and thereupon Vick left the defendant's office. Now, at that time, your Honor, was the beginning of the commission of the

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offense, and if there was no entrapment at that time there can't be any entrapment.

In other words, if the defendant was induced to commit the offense, if the idea originated in the mind of the government agents, and he was induced and his willpower overcome, then that is a defense; but I don't think it relates to the evidence. That is our understanding, your Honor.

The proof has been made here, and the only thing the Court would do on this would be to charge if, on the basis of all of the evidence they have heard, if they find that the idea originated in the minds of government agents, and that the idea of the commission of the offense originated in the minds of the government agents, and the defendant was induced to commit the offense against his will, and his will was overcome, then they should acquit him.

**THE COURT:** Well, then, it all stems from the original endeavors to entrap, and what was said later to the judges falls with it if it is entrapment. Is that your view about it?

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*Testimony of Z. T. Osborn, Jr.*

MR. NEAL: I don't think Mr. Norman and I are in any disagreement on this.

There is nothing for the Court to do at this point, as I see it, but to let the proof come in, and then on the second count I think we — Excuse me. On the first count. On the first count the jury should probably be charged on entrapment, and that's it. That's all your Honor has to do, as I understand it.

THE COURT: That is part of it. But the whole count falls if there has been entrapment.

MR. NEAL: The whole count falls if there is illegal entrapment.

THE COURT: Now, the defendant was testifying here before this discussion started that other things had a part in the overall entrapment picture. It caused the Court to wonder just to what extent entrapment would affect other testimony that didn't relate to it at all.

MR. NEAL: Well, I don't think, your Honor, I don't think — Maybe we are still not being clear. I don't think it has any effect on it. It is strictly a jury question from here on, it seems to me.

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THE COURT: Well, there is a difference.

MR. NEAL: Yes, Your Honor.

THE COURT: That is what you are saying, in substance?

MR. NEAL: Yes.

THE COURT: To that particular count, if the jury accepts it as being entrapment?

MR. NEAL: That is right, Your Honor.

THE COURT: Well, we have a meeting of the minds on that, I think. If you gentlemen are in accord on that, that is how it will be.

MR. NEAL: Fine, Your Honor.

*Testimony of Z. T. Osborn, Jr.*

THE COURT: The Court is just trying to understand.

MR. NEAL: Since the Court brought it up, Your Honor, the Government insists this — will insist — I don't know whether it is the appropriate time or not, but the Government insists this, — to be entitled to a change on entrapment, and I don't believe Mr. Norman disagrees with —

MR. NORMAN: I agree on that, would be the second count.

MR. NEAL: (Continuing) — To be entitled to a  
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charge on entrapment on a particular count, the defendant has to produce evidence of entrapment.

And entrapment means — Your Honor, reading from a case — Whiting vs. U. S., 321 F. 2nd, it is stated:

THE COURT: What case?

MR. NEAL: Whiting vs. U. S., in 321 F. 2nd, at 172, a 1963 case, 321 F. 2nd, 172. It is a 1963 case from the Fourth Circuit.

And there they go into a detailed discussion of what constitutes entrapment, then an analysis of the Supreme Court cases, Sorrels, Sherman, and so forth.

But, Your Honor, they say this:

“So far as the individual defendant is concerned, the defense of entrapment has no logic. The fact that defendant's actions were induced by government representatives does not mean that he did not commit all the elements of the offense.”

In other words, the law, Your Honor, is he can't take the stand and deny the offense, then plead entrapment. Nor can he say — you have got to admit the offense,

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then plead entrapment.

*Testimony of Z. T. Osborn, Jr.*

This goes on to say — here is what I wanted to present to Your Honor. With respect to the second — the Beard count of the indictment, if the inducement had come from parties having no connection with the Government, it would absolve him in no degree.

THE COURT: I don't believe there is any serious contention about that, don't think Mr. Norman —

MR. NEAL: I thought not.

MR. NORMAN. No.

MR. NEAL: I thought he said —

THE COURT: Well, he did at first, but he has since then —

MR. NORMAN: Insofar as the second count is concerned, Your Honor, if at the conclusion of this evidence, and we are just in the middle of it — if at the conclusion of the evidence there is no evidence of participation by Government agents, insofar as the Beard matter is concerned, we could not and would not insist that the defense

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of entrapment is available to this defendant on this count of this lawsuit.

We are in the middle of this lawsuit and not at the end.

THE COURT: Well, up to this time, as to the second count, there is no evidence here from the Government or the defense up to this time of the participation of a Government agent with Beard that would entitle this defendant to the defense of entrapment.

But, as you say, the lawsuit isn't over.

MR. NEAL: The Court will do —

THE COURT: Well, the Court will depend on you good lawyers to keep us straight on this.

And — well, any comment about the burden of proof on that issue, that question of entrapment?

MR. NORMAN: Yes, sir.

*Testimony of Z. T. Osborn, Jr.*

**MR. NEAL:** Well, no. Well, I don't know whether that we are going to stand on — there is a very, very complicated burden of proof which says that there are some issues, really, that the burden upon the Government —

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let's see.

They say the burden is on the Government. The burden is on the defendant to prove beyond a reasonable doubt that there was no inducement.

**THE COURT:** Beyond a reasonable doubt or by a preponderance of the evidence?

**MR. NEAL:** By a preponderance, Your Honor, yes. Some cases have split it up, then said if you rely on the defense of entrapment the burden of proof is on the defendant to prove by a preponderance of the evidence that there was inducement. If he does so establish, then that burden is put upon the Government beyond a reasonable doubt to prove that he had criminal intent to start with.

**THE COURT:** The better rule is, I believe, to put the entire burden on the Government to prove, with respect to all these things, that this was not entrapment.

**THE DEFENDANT:** Yes.

**MR. NORMAN:** We prefer Your Honor's statement on it, but technically, I think Mr. Neal make a correct state-

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ment of the law.

**MR. NEAL:** I don't think we are going to rely on any complicated charge, Your Honor. We are willing to assume the burden of proof with respect to entrapment, with this exception, Your Honor. If there is no proof of entrapment on the second count, which happened chronologically in time prior to the first count — in other words, the Beard one — we are entitled to have the jury charged that they



*Testimony of Z. T. Osborn, Jr.*

may consider, if they find the first offense was committed — actually committed by defendant, then they are entitled to consider that in determining whether there was any entrapment.

MR. NORMAN: I agree with reference —

MR. NEAL: That if defendant committed the first count, if he actually did what Beard charged him with, then that is very important on whether he was entrapped in the Vick matter.

THE COURT: Well, that is the second count, now?

MR. NORMAN: Well, I don't agree with that, Your

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Honor.

THE COURT: Well, I believe we have a pretty fair understanding about these legal questions, gentlemen. And we will have these discussed again when you present your special requests.

MR. NEAL: I want to argue that that Mr. Norman doesn't agree with, but I don't guess now is the appropriate time.

THE COURT: What is that?

MR. NEAL: I said, I think we are in pretty substantial agreement. We are willing to assume the burden that that much of it, now, is on us.

I am saying this, Your Honor, that with respect to the Vick count, if the Court concludes to charge entrapment and let the jury find whether there is entrapment or not, then we are entitled to the charge that if the defendant

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— if the jury finds that the defendant — if the jury finds that the defendant committed the Beard matter — that is, committed an offense with respect to Beard, which occurred in time prior to the Vick matter, then we are

*Testimony of Z. T. Osborn, Jr.*

entitled to the charge that they may consider, if they find he committed the Beard offense, they may consider that in determining whether he was entrapped or not.

THE COURT: Well, that is more or less elementary.

MR. NEAL: Yes.

THE COURT: That is one of the things they can consider on that question.

MR. NEAL: Yes, sir, the fact that this came prior —

THE COURT: So that is in agreement on that.

And unless Mr. Norman can come up with something on that question, the Court will certainly include this idea in any instructions given to the jury on entrapment.

Do you want a recess now, or not?

MR. NEAL: We are ready for it.

THE COURT: Well, we will have a short one, gentlemen. Just ten minutes this time.

(Recess)

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(Thereupon, the jury returned to the courtroom, and the trial of the case was continued in the presence and hearing of the jury, as follows:)

MR. HOOKER: Shall I proceed?

(BY MR. HOOKER:)

Q. Now, Mr. Osborn, referring back to the bottom of page 7, which is where we left off, Mr. Vick then said:

“Immediately and then five thousand when it’s hung.”

Is that right?

A. Yes, sir. That was what I was — that is what he said.

Q. Yes, sir. You say:

“All the way, now!”

Vick says:

“Oh, he’s got to stay all the way!”

*Testimony of Z. T. Osborn, Jr.*

You said:

"All the way."

A. Yes, sir.

Q. Then he said:

"No swing. You don't want him to swing like we discussed once before. You want him ———"

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What does "swing" mean? What did you ———?

A. Well, in this context, and what I took it to mean, it would mean this: Suppose he is left by himself on the jury, no one else with him, could he go ahead and vote to convict? That is what I say, because he was saying, "Should he stay all the way?" and I agreed with him for the juror to hang the jury.

Q. Vick said:

"You don't want him to swing like we discussed once before."

Had you and Vick discussed once before the swinging?

A. To my recollection, in none — none of the conversations before with reference to Elliott, there had never been any discussion of swing. That leaves me unable to say. I don't know.

Q. It always was, so far as Elliott was concerned, if he is fixed he was to stay all the way?

A. Yes, sir.

Q. Then you said:

"Of course, he could be guided by his own ——— but that always leaves a question. The thing to do is just stick with his crowd. That way we'll look better and may-

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be they'll have to go to another trial if we get a pretty good court."

*Testimony of Z. T. Osborn, Jr.*

A. Well, I think that is one place, as I said, according to — — is substantially accurate, or inaccurate — — I think that is one of places here where a word is left out of the transcript, or maybe wasn't picked up on the tape.

I believe what I was saying was he could be guided by his own judgment, or something like that.

Then in the words there "stick with his crowd, they will have to go to another trial," I think what I intended to say, or would have said, like ten to two in favor of the defendant, ten in favor of acquittal, we wouldn't have to go to another trial. A lot of times, even though a hung jury — — and they have a perfect right to try you again, if there is a great big count in favor of acquittal, the Government doesn't try it again.

Q. In other words, you meant to imply when this man Elliott stayed fixed, so to speak, why — — to use your statement, the count turned out eight to four, nine to three, ten to two, something like that, maybe the Government would abandon it and not try it again?

A. Yes. In other words, it doesn't make sense for me to  
P. 885

be saying, "Maybe it will have to go to another trial," or — — I am just saying I think that is one of the places that there is this minor inaccuracy.

Q. Well, in any event, you intended to convey the meaning that the understanding with Elliott would be not to do any swinging, vascillating back and forth, to just stay right with acquittal and stay to the end?

A. Yes.

Q. Vick says: "Now, I'm going to play it just like you told me previously, to reassure him and keep him from getting panicky, you know. I have reason to believe that he won't be alone, you know."



*Testimony of Z. T. Osborn, Jr.*

You said:

“You assure him of that, 100%.”

What did you mean by assuring him one hundred percent that he would not be alone?

A. Well, I meant this, that if he went — that if a juror goes into this, you would want him to go into it with the feeling of confidence that he is not going to be standing out, one man like a sore thumb, you see. You know how people — he comes on — the purpose of it is indicated by the next two sentences.

Q. “And to keep any fears down that he might have, see?”

Tell me what you mean by to:

“To him there will be at least two others with him.”

What do you mean by that?

A. Well, to reassure him — to assure him that there would be others, at least two others with him.

Q. They would be for acquittal, too?

A. That is right, that is what I was meaning by that.

Q. Well, what did you base that on?

A. In part, Mr. Hooker, I was basing on nothing. And in part I was basing in on this:

I am answering Vick's request, now, to reassure the man, and in another part I am basing it on the fact that I do have reports on some of the jurors, and I did have at that time — I had a pretty strong feeling that we probably could have picked a jury that would — that many of the people on it would have been fair, and some of them would have been for us. Now, in another part, as I told the judges, I am for saying there, “All right, let's say to him —” because I really don't know who is going to be on the jury, and of course I know also this, that he is the only one that anything like this is going on about. That this the three-

*Testimony of Z. T. Osborn, Jr.*

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phase answer to it. Part of it —

Q. In other words, what you are saying now is that you did not mean that you would have at least two more fixed, but you were intending to convey the meaning that from your investigation you thought you would have at least two more that would vote — honestly vote for acquittal?

A. And what I am really meaning is — what I am doing, without particularly having the meaning about it, I am telling Vick what to tell him. You see, he says he has reason to believe that he wouldn't be alone. I say, "Assure him of that, keep down any fears that he might have." And I said, "Tell him there would be at least two others with him." I could have as easily said there will be at least half the jury with him. I could have said that. But what I am saying is — which is just what you have asked me — to assure Elliott.

Q. Sure, for him to assure Elliott that he need not be afraid to stand up?

A. He isn't going to be standing by himself.

Q. And alone. You said, now — Vick says:

"Now, another thing, I want to ask you does John know anything. You know, I originally told John about me knowing."

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"You said:

"He does not know one thing."

You are referring to John Polk?

A. Yes, John Polk. He had in another earlier conversation, when I had been resisting him — he had asked me whether I wanted him to go to some lawyer over there, did I want John Polk to do it.

He asked, "Are you saying no to me because you don't trust me? Would you trust someone else?"

*Testimony of Z. T. Osborn, Jr.*

And I had — I had told him no, that I didn't want some lawyer to do it; no, I didn't want John Polk brought up into it.

And here again, you fully understand it goes back to the other meetings. And I assure him again that Polk doesn't know one thing about it.

Q. And you told him:

"He'll come in and recommend this man, and I'll say, well, just let it alone, you know."

A. Well, yes.

Q. Vick says:

"Yeah. So he doesn't know anything about this at all?"

And you said:

"Nothing."

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And:

"Now, he hasn't seen me. When I first came here he was in here, see."

And you said:

"We'll keep it secret. The way to keep it safe is that nobody knows about it but you and me. Where could they ever go?"

Is that correct?

A. Yes.

Q. Substantially correct?

A. Yes. Now the blanks and —

Q. What do you think was in those places?

A. Here is what I think would have been in the blanks, in the first blanks — "we'll keep it secret." But under that, "Nobody knows about it but you and me." And I probably said to him, "Well, suppose something happened about it, now, where could they ever go except to you and me," — meaning —

*Testimony of Z. T. Osborn, Jr.*

Q. To find out?

A. That is right.

Q. Then:

"Well, that's it, I reckon. I'll probably go down there. See, I'm off tonight. I'm off Sunday and Monday, see.

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That's why I talked to you yesterday. I had a notion to go down there yesterday cause I was off last night and I'm off again tonight."

And you said:

"It will be a week at least until we know the trial date."

A. Yes, sir.

Q. Then he said:

"O. K. You want to hold up doing anything further till we know."

You said:

"Unless he should happen to give you a call and ———, some blanks ———"

"—— something like that, then you just tell him——" what is that ———

"Wherever you happen to run into ——— whenever you happen to run into him."

Is that substantially correct?

A. Yes, sir.

Q. And he said:

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"Well, he's not apt to call, cause see ———"

You said:

"You were very circumspect."

Vick says:

"Yeah. We haven't talked really definite and I think he clearly understands. Now, he might, it seemed to me that maybe he thought I was joking or, you know."



*Testimony of Z. T. Osborn, Jr.*

And you said:

"That's a good way to leave it, he's the one that brought it up.

"That's right."

And the remainder of it about him being paid, and I don't think that I care to take up any further time with that.

Now, Mr. Osborn, immediately following the disbarment proceeding in which this recording was played, you — and this, or the rest of this is — these ladies and gentlemen want to get rid of those, Mr. Officer — you went immediately to see Mr. Hoffa, didn't you?

A. Probably — probably immediately, I think would be immediately following that.

P. 893

Q. I asked you about this \$5,000 and you stated that you didn't know where you were going to get the money, you hadn't decided that. The Teamsters had paid during the period involved just preceding this, through your firm, as shown by records as filed down here, a large sum of money, had it not?

A. I don't remember about just preceding this, about just preceding this.

Q. Well, I say, from the time that you got into the Hoffa case in 1962, on up until this time, November of 1963, didn't your records show that they had handled through your office about \$140,000?

A. I have never totalled up the total amount. About — well, let's say maybe a total of \$50 or \$60,000, for fees. All of the rest of it —

Q. Fifty or \$60,000 was attorneys' fees?

A. Yes. By that time, you see.

And then from time to time as we incurred expense, and they were enormous, every time you turned around you

*Testimony of Z. T. Osborn, Jr.*

were having to do something, then they would reimburse on our voucher for that expense.

Now, to say how much the expenses would have been along, I hadn't kept up with that and haven't had occasion to add it up.

P. 894

Q. Could you tell the jury or give the jury an idea of about how much of the expense was incurred in the investigation of jurors?

A. A pretty big part of it would have been. How much, you could count it up really by adding up the checks that would have gone to Polk, who had been paying Cisco, and Hines and Goodwin, or someone else he brought in, and checks that went to Chief Muller. Many and many and many investigative agencies — that was Muller and Neely. You could add it up by adding checks to these investigators. If I saw it I could tell you what amounts had been spent which would have been primarily for those three jury investigations, the 1962 jury, then the investigation of the Grand Jury, then the investigation of the 1963 panel that was to be seated in October.

Q. Well, would you say that for the entire period that something in excess of \$140,000 would sound to you about right?

A. Well, it sounds big, but I don't know. As I say, I haven't added it. I only thought of it really from the standpoint of what Mr. Denney and I got, and the other boys there at the office.

MR. HOOKER: That is all, if Your Honor please.

P. 895

MR. NORMAN: There is one question since Mr. Hooker asked you that.

*Testimony of Samuel Eugene Wallace*

**REDIRECT EXAMINATION**

**BY MR. NORMAN:**

**Q.** Neither you nor the Teamsters, nor anybody else has paid this lawyer to represent you, have they?

**A.** No. You have defended me, you have refused to even take any money for the expense of your office.

**THE COURT:** All right, Mr. Osborn, I think that is all. (Witness excused.)

**MR. NORMAN:** I will call Mr. Wallace.

P. 896

**SAMUEL EUGENE WALLACE**

the next witness, being first duly sworn, was examined and testified as follows:

**DIRECT EXAMINATION**

**BY MR. NORMAN:**

**Q.** Will you please state your full name into the record?

**A.** Samuel Eugene Wallace.

**Q.** Will you mind giving us your age, Mr. Wallace?

**A.** Thirty-six.

**Q.** And where do you live, sir?

**A.** 2951 River Drive Court.

**Q.** That's here in Davidson County, is it not?

**A.** Davidson County.

**Q.** Are you a man of family?

**A.** Yes, sir, I am married, five children.

**Q.** What is your business, Mr. Wallace?

**A.** I am an attorney here in Nashville.

**Q.** A member of the Nashville bar?

**A.** Yes, sir.

*Testimony of Samuel Eugene Wallace*

Q. How long have you been practicing law?

A. Six years.

Q. Mr. Wallace, do you know Robert Vick?

A. Yes, sir, I do.

Q. In the fall of 1962, early fall of 1962, did Mr. Vick  
P. 897

come to your office with a jury list, a Federal jury list?

A. Yes, sir. Mr. Vick had more or less made my office headquarters for some time.

Q. Had he been engaged in making some investigations for some lawyers here in town, as well as working as a deputy, or workhouse man, and then after he became patrolman?

A. Yes, sir, and he served some papers out of the sheriff's office, and that's how I got to know him.

Q. How you come to know him?

A. Around June of last year he started doing some work for us.

Q. You mean June of '62? I mean, June '63?

A. Yes, sir.

Q. This is '64.

Now, I had asked you if, therefore, following your acquaintance with him, in the fall of last year, if he came to your office with a jury list from Federal Court?

A. He did.

Q. Will you please state what he did, and what was his — if he stated his object in coming there with that jury list? Tell us everything that happened there between you.

A. He came in and said that he had gotten a jury list, and that he was going back to work for Mr. Osborn.

P. 898

Q. Did you know that he had worked for Mr. Osborn in 1962 together with some other officers, in investigative work?



*Testimony of Samuel Eugene Wallace*

A. He told me about it a number of times, yes, sir.

Q. All right. Pardon me for interrupting. Go right ahead.

A. And he asked me to look at his list and see if I knew anybody, and I looked at the list —

Q. Was that a full jury list from the Federal Court?

A. Yes, sir, as far as I know.

Q. All right, You say you took the list and looked over it?

A. Yes.

And he asked me if I know anyone on that, that he had been hired or employed to gather background material on these various jurors, and I look at the list and there was one name that was familiar on there, and I told him that I vaguely knew this one fellow. He was an old family acquaintance from Stewart County.

And at that time he told me that he had a relative on there.

And at that time he told me that he had a relative on there.

Q. Did he tell you what his name was?

A. Yes, sir. Elliott.

Q. Elliott?

P. 899

A. Yes, sir.

Q. Did he tell you where he lived?

A. Springfield.

Q. What else did he say about it?

A. Well, that day was about —

Q. All he said?

A. — all that was said. He acted like he was real happy to be back to work.

Q. All right. Now, did he later return to your office?

A. I would say three or four days later.

*Testimony of Samuel Eugene Wallace*

Q. Three or four days later?

A. Yes, sir.

Q. What was his purpose in that trip, and what did he say to you, please?

A. Oh, he came in and came back into my office, and there was a general conversation. He was laughing and smiling, and I hadn't been out of the hospital too long and wasn't too busy, and he could come up there sometimes and spend 30 or 40 minutes just carrying on a conversation. And he made a proposition about, said — he looked at me and laughed, smiled, and said, "Would you take chance on going to jail for enough money?" And he was smiling, as I say, and laughing, and I said, "Well, I don't know. I suppose every man has got his price."

P. 900

Q. Did you think he was serious about it?

A. No, sir, absolutely not.

Q. All right. Go ahead.

MR. NEAL: I didn't hear that last answer.

MR. NORMAN: He said he thought every man had his price.

MR. NEAL: And what was the question?

MR. NORMAN: I asked him if at that time he thought it was serious.

MR. NEAL: And what did he say?

MR. NORMAN: You asked me about that time. I am not sure I got his answer. I understood him to say no.

A. Absolutely not. In my opinion.

And he talked on a little further, and he said, "I wonder how much it would be worth to try for a hung jury — to Hoffa for a hung jury?"

And I said, "I don't have any idea."

He said, "Well, I figure it would be worth about \$350,000."

*Testimony of Samuel Eugene Wallace*

I said, "Well, you're selling yourself too cheap," — the best I remember. I said it would be a minimum of \$100,000. This conversation was just —

P. 901

Q. You thought jocular?

A. Just back and forth. And I think that is all that was said on that occasion.

Q. Did he come back?

A. Yes, sir, he came back in a day or two.

Q. And when he came back the third time, what took place?

A. He brought up the same conversation.

Q. With respect to what, to the juror Elliott?

A. About the Hoffa trial and Elliott and so forth. And he said, "I am going to hire you to be my lawyer." And I said, "What do you need a lawyer for?"

He said, "I need somebody to deal with Tommy."

Q. Tommy?

A. Osborn.

And of course I asked him what he meant. He said, "Well, Tommy is too smart for me. I need somebody to talk to Tommy that can talk to him on his level." And that went on back and forth, and he never did get into detail.

Q. Never went into further detail about it then?

A. No.

Q. All right. Did he then come back the fourth time?

A. The best I recall, Mr. Norman, and the next time he called me.

P. 902

Q. Over the phone you mean?

A. Yes, sir.

Q. All right.

A. And he asked me to meet him somewhere.

*Testimony of Samuel Eugene Wallace*

Q. Asked you to meet him somewhere. And where did he ask you to meet him?

A. Out — I met him out here on Dickson Road. He was on duty.

Q. I beg your pardon?

A. He was on duty.

Q. He was on duty as a policeman, and asked you to meet him?

A. Yes.

Q. And you met him on Dickson Road?

A. Yes, sir.

Q. And what did he want with you that time?

A. He brought up the subject of Elliott again and asked me what I thought he should do, that he was going to go up to Springfield and smoke the situation over.

Q. Smoke the situation over? His language?

A. That's the words he used.

Q. By that time did you think he was still joking.

A. No, sir.

Q. Or had you changed your mind about it?

P. 903

A. Yes, sir.

Q. What else was said by you or him?

A. I told him that I wasn't involved in the Hoffa trial; I wasn't involved — I wasn't employed in any way. I had nothing to do with it; that he didn't work for me. I had nothing to do with it, and anything that he did he should talk to Tommy Osborn about it, not me.

Q. What did he say about that? Did that end that?

A. That ended the conversation.

Q. All right.

Now, did you see him any further — did you talk to him any further on that subject?

A. No, sir.



*Testimony of Samuel Eugene Wallace*

Q. That was the last you heard of that subject?

A. Yes, sir.

Q. Now, then, when did you next have a conversation with him that had anything to do with Osborn in any way?

A. I would say it was about a week or ten days after Mr. Osborn was disbarred.

Q. All right. Where was that? Where did you have that conversation with him?

A. He called me up and asked me to meet him at the tap room at the Hermitage Hotel.

Q. Did you meet him up there?

P. 904

A. I did.

Q. What did he want with you then?

A. He stated that he would like for me to come down here and talk to Mr. Neal or Mr. Sheridan.

Q. Did he say what he wanted you to talk to them about?

A. He started off by saying that, when I first met him, he said, he started the conversation by saying that, "I know you are surprised, I went on the payroll in May."

Q. "I know you are surprised." I went on what payroll in May?

A. The Federal payroll.

Q. In May?

A. In May. And he told me that night sitting up there at a table that his assignment was to get Tommy and to get me.

Q. To get Tommy and to get you?

A. Yes, sir.

Q. And that's after you had told him you would have nothing to do with him, back before that?

A. That is right. He said, "I got Tommy but I found out that you didn't have anything to do with it. Don't know anything about it."

*Testimony of Samuel Eugene Wallace*

Q. What did you tell them about coming down to talk to

P. 905

Sheridan and Neal?

A. I told him I would be glad to.

Q. Did you?

A. Yes, sir.

Q. Now, then, after that did you hear from Vick any more?

A. Yes, sir, he called me, I suppose a week later, and asked me if I would come down and talk to Mr. Sheridan.

Q. Did you do that?

A. I certainly did, yes, sir.

Q. Then did you hear from him after that, and this year?

A. Around the last part of December he called me and asked me to meet him at a place on Church Street.

Q. Was that a restaurant?

A. It's a restaurant.

Q. In the old Exchange Building there?

A. Yes.

Q. All right. What did he want with you over there?

A. Well he — we went in. I sat down and started talking to him, and he told me that he felt sorry for Tommy, and the situation he was in, and wished that it had never happened.

And during the course of the conversation, he asked me, said, "How much do you think it would be worth to Tommy if I change my testimony in this case?"

P. 906

And I said, "Robert, I don't think that you changing your testimony is going to affect this case one way of the other."

And he asked me two or three times about how much would it be worth if he did change it, and I kept telling

*Testimony of Samuel Eugene Wallace*

him, well, I didn't think it would make any difference what he did, and he told me, well —

Q. That's after you had come down and talked to Mr. Neal and Mr. Sheridan?

A. Yes.

Q. And what else?

A. And he told me that there were some things that I didn't know, that he could help Tommy.

Q. All right. Did he say anything about you going to see Tommy about it?

A. Mr. Norman, I don't think we ever got that far. He just asked me —

Q. What did you tell him?

A. I told him that I didn't think it would do any good. I didn't even want to discuss it any more.

Q. Then what did he say?

A. We talked some more, shifted to something else, and we left within five or ten minutes after that.

Q. Did you see him any more after that?

P. 907

A. Yes, sir.

Q. About how long after that?

A. He called me some time the latter part of March, or the first of April, the best I recall.

Q. What did he want then?

A. He called me down to the same place and he brought up the same topic of conversation about Tommy, and how much it would be worth. And I told him that I just wasn't interested in talking to him about it. He said, "Well, that's the reason I called you down here. I just wanted to know if you were in or out," and I said, "I definitely want to be out. I am sorry I ever heard of this case. I am sorry I ever heard of James Hoffa, or anything about it. Just let me alone."

*Testimony of Samuel Eugene Wallace*

Q. What did he say then?

A. He said, "All right, I just want to know how you feel, because if you didn't want to do it, I have got somebody else that will."

Q. Did you know a man named Harry Childress?

A. No, sir.

Q. You didn't know that right after that then he started talking to Harry Childress about this same thing? You didn't know that?

A. I haven't talked to him.

P. 908

MR. NORMAN: If you will indulge me just a minute, Your Honor.

You may examine.

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**CROSS-EXAMINATION**

BY MR. NEAL:

Q. Mr. Wallace, did you ever tell these conversations that you are talking about now, did you ever tell Mr. Osborn about them?

A. What conversations are you referring to?

Q. Let's take — I think you said some in the fall of 1963, the first two or three of which you say were joking, is that correct?

A. No, I never talked to Mr. Osborn about it. After this came up, and it came out publically and he was disbarred down here, I did tell Mr. Osborn of what Vick had told me prior, yes, sir.

Q. Did he — did you tell him before Mr. Osborn was indicted?

A. I believe it was.

You think it was before he was indicted?

A. Yes.



*Testimony of Samuel Eugene Wallace*

Q. You never came down to tell me about that, did you, before he was indicted?

P. 909

A. I talked to you that night back there, Mr. Neal, and you qualified every question that you asked me on the 1962 trial, and you asked me over and over about different people, and about things that happened in the 1962 trial, of which I knew absolutely nothing.

Q. I didn't purport to examine you anything about Mr. Osborn, did I?

A. No, sir. Mr. Vick told me before I come down here to talk to you that you weren't interested in what had happened in this case, in the Osborn case; that you or Mr. Sheridan weren't interested in that at all, because you were convinced there wasn't anything to this. And Mr. Vick sat in the room the whole time that you and I were talking.

Q. The fourth meeting when you said that Vick said he went to Springfield, can you give me the exact date of that?

A. No, sir.

Q. Well, could you give me an approximate date? Was it in November of '63?

A. No, sir. I would say it was some time in October.

Q. October of '63?

A. Between the middle and later part of October of '63?

Q. It wasn't in November '63?

A. No, sir.

P. 910

Q. Now, do you know whether or not that — you don't know whether or not, I assume, that Mr. Vick was reporting this to the FBI, the conversations he was having with you?

A. I have no way of knowing, Mr. Neal.

MR. NORMAN: Is that all?

*Testimony of Jean Reeves*

MR. NEAL: Yes.

MR. NORMAN: Thank you, Mr. Wallace.

(Witness excused.)

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**JEAN REEVES**

the next witness, being first duly sworn, was examined and testified as follows:

**DIRECT EXAMINATION**

BY MR. NORMAN:

Q. Would you please state your name for the record?

A. Yes, sir, Jean Reeves.

Q. Is that J-e-a-n?

A. J-e-a-n.

Q. Jean Reeves. And your address, please, ma'am?

A. I live with my mother, 1304 Fowler.

MR. NORMAN: I hate to ask you, but I don't want to ask the jury to struggle to hear you. Will you please raise your voice?

THE WITNESS: Yes, sir.

BY MR. NORMAN:

Q. Is it Miss or Mrs.?

A. Mrs.

Q. Mrs. Reeves, what is your business? Do you work?

A. Yes, sir, I am secretary to Mr. Samuel Wallace, and West Coss.

Q. You are a legal secretary?

A. They are both attorneys; yes.

Q. Do you know a man by the name of Robert Vick?

A. Yes, sir.

P. 912

*Testimony of Jean Reeves*

Q. Did he frequently come to that office as an officer serving papers and otherwise?

A. No, sir, not as an officer serving papers. He came in frequently.

Q. I didn't mean he came there to serve them on you, but he was a process server. How did you come to know him, I will put it that way?

A. Well, he would come in the office at various times, with different people, and he would sit around waiting to see one of my attorneys. And he would sit around and talk if Mr. Wallace or Mr. Coss happened not to be in.

Q. All right. Now, I want to ask you something about September of last year. Do you remember an occasion in September last year when he came there with a Federal jury list?

A. I remember when he came there with a jury list, yes, sir.

Q. Did he say something to you or make some inquiries?

A. He didn't mention the list to me, no, sir.

Q. What did he say on that occasion?

A. Well, he came there to see Mr. Wallace. He had the list with him. He didn't mention —

Q. Was Mr. Wallace there at that time?

A. He came in just a few minutes after Mr. Vick did,

P. 913

yes, sir.

Q. All right. Did he make any statements to you about it at that time?

A. Well, do you mean concerning the jury list?

Q. Yes.

A. No, sir, not concerning the list.

Q. Did he make any statement to you about some work he was doing?

A. Yes, sir.

*Testimony of Jean Reeves*

Q. What did he say?

A. Well, Mr. Vick always had tales that he was doing some important private investigation for someone. On this occasion he told me that he had some work that he wanted to do, that he didn't quite know how to go about doing. He wondered if I would help him. I said, "Well, I don't see how I could help you do any kind of investigative work."

He said, "I think you could."

He said, "There's a man in this city who is a very smart man. He knows something that I want to find out, but I don't know how to go about doing it. I couldn't get it from him, but I think that a female could."

Q. Did he say who it was?

A. He didn't mention a name, no, sir.

Q. All right, What did he say?

P. 914

A. He said that he was a very well known person here in Nashville, and that he was a very smart man. He didn't mention a name.

Q. What did he say he wanted you to do?

A. Well, he didn't say what he wanted me to find out. He said, "Do you think you could do it?"

Well, actually I thought that he was joking. I didn't take him seriously at all. I laughed. I said, "Well, certainly, if I could do it."

And he said, "All right, there's somebody else that I would like to have see you to see what they think about it."

And he wanted me to meet him at a little coffee shop down on Church Street. I laughed. I said, "If I get a chance to leave the office, I will meet you for coffee." I didn't get away, but he called me back twice that afternoon wanting to know when I was going to be down there. I told



*Testimony of Jean Reeves*

him that I couldn't leave the office, and that I would not be able to come down.

Q. Did you ever have any discussion about that with him further?

A. No, sir.

Q. Did you have any discussion with him with reference to Mr. Osborn?

P. 915

A. No, sir, not anything other than the fact that Mr. Vick said that Mr. Osborn was a very good friend of his, that he had certainly been good to him in many ways.

Q. Now, you don't know whether it was Mr. Osborn that he wanted you to get this information from as a female or not?

A. He didn't mention the man's name, no, sir.

Q. Did he ever discuss it with you in any other way, Mrs. Reeves?

A. No, sir.

He did say that if he could get my bosses to give me the time off, he would like for me to work for him to do some work for him, in Washington.

Q. In Washington?

A. Yes, sir. He said, "I have friends there who want me to get something done for them."

Now he never said anything else about that. That was all that was mentioned.

Q. Do you remember whether or not at the time that he came there with that list that that was soon after the jury list was published in the paper with reference to one of these Hoffa trials? Or do you?

A. I don't recall exactly. It was in the latter part of the summer.

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*Testimony of Frank William Muller*

**FRANK WILLIAM MULLER**

the next witness, being first duly sworn, was examined and testified as follows:

**DIRECT EXAMINATION**

By MR. NORMAN:

Q. For the benefit of the record, please, sir, will you state your full name?

A. Frank William Muller, M-u-l-l-e-r.

Q. And your age, please, sir?

A. I am 51.

Q. And where do you live, sir?

A. I live at 4600 Dakota Avenue, here in Nashville.

Q. Are you the former Chief of Police of the City of Nashville?

A. Yes, sir.

Q. How long were you with the police department of the City of Nashville?

A. Almost 23 years.

Q. And started as a patrolman?

A. Yes, sir.

Q. And retired as chief, did you not?

A. Yes, sir.

Q. Mr. Muller, after your retirement did you go into some kind of business?

A. After about — I retired the 26th day of March.

P. 918

Q. Of what year, please, sir?

A. Of last year. And I didn't do anything until the second day of September.

Q. What did you do then?

A. I went in a partnership with a couple of other retired police officers, in a private detective or investigating office.

**Testimony of Frank William Muller**

**Q. And where do you all maintain your offices?**

**A. At 1223 in the Stahlman Building.**

**Q. Is former lieutenant or inspector Neeley one of your associates?**

**A. He was. I have been out of it since the 14th day—**

**Q. Well, was he?**

**A. Yes, sir, he was, yes, sir.**

**Q. And Mr. Moore, formerly —**

**A. Mr. Jessie Moore, yes, sir.**

**Q. Now, then, Chief, do you know Mr. Tom Osborn?**

**A. Yes, sir.**

**Q. How long have you known him, sir?**

**A. I guess I have known Mr. Osborn 15 or 16 years, something like that.**

**Q. Since he has been practicing law in Nashville, have you not?**

**A. Yes, sir.**

**P. 919**

**Q. During last year did he come to you to solicit your help, to employ you in some investigative work?**

**A. No, sir. On the fourth day of September we were calling some lawyers to solicit some business.**

**Q. That's after you went in business?**

**A. Yes, sir.**

**Q. You say that was on the fourth day of September of 1963?**

**A. Yes, sir.**

**Q. All right, sir.**

**A. And I called Mr. Osborn myself, and told him what we were doing, and he said well, he thought he had some work for us to do.**

**Q. All right. Did you go see him?**

**A. Yes, sir, the three of us did.**

**Q. And what kind of work did he want you to do?**

*Testimony of Frank William Muller*

A. He wanted us to make an investigation of — as to the character of a witness that was involved in the Hoffa trial.

Q. Did you do that?

A. Yes, sir.

Q. All right. Following that did you get some further employment by him?

A. Yes, sir.

P. 920

Q. What was that, Chief?

A. He called us and we went down there and he told us that he wanted us to — he had a list of a jury panel that involved people —

Q. Was that in connection with the trial of the Hoffa case?

A. Yes, sir. It involved people in Davidson County. If I am not mistaken, I believe there were 55 on it, and he asked us to get the information, I believe it was on either 51 or 52. Of course, he had the name, and he wanted the correct address, the name, and the religion if possible, and the occupation, and —

Q. All these were in Davidson County?

A. All these were in Davidson County. And he wanted to know, does he own his own business or is he employed, and his marital status. And that was the extent of it.

Q. Now, chief, did you understand that he in previous trials had had some other people employed to do that work?

A. He told us that he did, yes, sir.

Q. Whom did you understand he had had employed in other trials?

A. Well, he didn't exactly — well, he did name Mr. Polk. He is a retired government employee, and he said that he did have some young law students from Vanderbilt.

P. 921



*Testimony of Frank William Muller*

I believe that's what he said. Before.

Q. Did you know Mr. Vick at that time?

A. No, sir.

Q. You didn't know him?

A. Now, let me correct that. When I was chief of police, Mr. Vick was — I got a call from Mr. MacIntyre, who hired city police that wasn't going under civil service, in other words, for unclassified jobs. and Mr. MacIntyre called me one day and he said, "I am sending a man over there by the name of Vick." He said, "I have already hired him as a workhouse guard."

At that time 75 percent of the workhouse guards was not under civil service. He says, "I am sending him to your office and you have your secretary put him on the workhouse payroll."

Q. Who was Mr. McIntyre?

A. Mr. McIntyre — he worked —

Q. Well, is he Mayor Briley's assistant.

A. No, sir, he worked out of Mayor Ben West's office.

Q. I meant Mayor West's office.

A. Yes, sir. He was transferred down to the fire department. I believe he's a lawyer.

Q. Did he begin to work?

A. Yes, sir, we put him to work as a workhouse guard,

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and that's the only time I ever saw Mr. Vick in my life.

Q. Now, getting back to this employment, were you given a form on which you were to report, or how were you to report on these 51 in Nashville?

A. On this form (indicating).

Q. Do you have one of them there?

A. Yes, sir.

(Document handed to Mr. Norman.)

*Testimony of Frank William Muller*

BY MR. NORMAN:

Q. You have handed me here a typewritten form with blanks.

MR. NEAL: Excuse me, Your Honor. If Your Honor please, we see no relevancy to this testimony about what he may have done in the investigation of jurors. We object to it as being irrelevant. It doesn't prove or disprove the guilt of the defendant.

If that is the line of testimony. I am not sure it is.

THE COURT: How about that, Mr. Norman? Is this to show the type of form that was used generally and by the particular people in question here? Is that your purpose?

MR. NORMAN: Yes, sir, all of them, and the instruc-

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tions they had from Mr. Osborn. This man — they were doing the work — I am not saying anything I shouldn't say in the presence of the jury, because it is in the record. The testimony already reveals through Mr. Vick and others that Mr. Vick and certain people were making investigations for the first — what I call the first area, or the pre-trial, and then the second area, which was the Grand Jury investigation, and that they were let go, and that new people continued the same investigation in the same matter with the same instructions, and that was the time that Mr. Vick came up and asked for employment and joined in that third area of work with these men.

MR. NEAL: Your Honor, it seems to me on that statement this man, the chief, can give no relevant testimony. There is no — what he did in his investigation has nothing to do with what the defendant did with Harry Beard, with respect to Juror Harrison, or the Juror Elliott.

THE COURT: The Court understands Mr. Norman is proposing to introduce one of these forms which he says is a similar form to those used by Mr. Vick and others.

*Testimony of Frank William Muller*

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**MR. NORMAN:** And for the purpose of showing that this defendant, contrary to what the government is trying to claim, was following a pattern of precaution with these people, with his instructions to them, and with the form that they were to report on.

**THE COURT:** Well, that limits it to an extent. The Court thinks it is admissible. I overrule the objection, if you are objecting.

**BY MR. NORMAN:**

**Q.** Now, I believe the first on the form is the name, address, and race, religion, occupation, ownership of business, marital status, labor organization or affiliation, if any.

**A.** He asked us to forget the last question on there, because he was — the lawyers was in a kind of a hurry. He said, "Leave that last part, "labor organization or affiliation", he said to leave it off.

**Q.** To leave it off?

**A.** Yes, sir.

**Q.** Now, then, did you begin, and did you and your associates make these investigations, Chief?

**A.** Yes, sir. We filled out these forms. We got the information needed on these forms from public records, like —

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**Q.** Well, you made a general investigation to obtain that information?

**A.** Yes, sir.

**Q.** Now what instructions did you have from Mr. Osborn as to whether or not you should go beyond that in your investigation?

**A.** Not to go beyond this, at no time, and that if we knew — if we were walking down the street and if we knew one of these prospective jurors and he was walking

*Testimony of Frank William Muller*

on the same side of the street as us, to cross over on the other side, not to even get close to him.

Q. To have no contact with him?

A. To have no contact whatsoever.

Q. Did you ever, in any of that investigation, or any of them that you handled, did you have any instructions from him to do anything other than to provide the information there, with those precautions?

A. No, sir, this is it.

Q. You had a written contract, as a matter of fact, did you not?

A. Yes, sir.

Q. Were those instructions written out in your contract? Or in a letter to you?

A. Yes, sir. We had a contract that he gave us to —

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when we started investigating the character of one of the witnesses.

Q. Now, I notice that's dated September 4, 1963, which is the day you say that you made this?

Q. And this is a letter over Mr. Osborn's signature, is it not?

A. Yes, sir.

Q. And were you instructed in that letter of employment —

A. Yes, sir.

Q. — with reference to the things that I have just asked you about?

A. Yes, sir.

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*Testimony of James R. King*

**JAMES R. KING**

the next witness, being first duly sworn, was examined and testified as follows:

**DIRECT EXAMINATION**

**BY MR. NORMAN:**

**Q. Is it James R. King?**

**A. Yes, sir.**

**Q. What is your address, Mr. King?**

**A. 1012 Lenore Street.**

**Q. And your age, please, sir?**

**A. 39.**

**Q. And are you a man of family?**

**A. Five, yes, sir.**

**Q. You mean a wife and five children?**

**A. Yes, sir.**

**Q. And what is your work, sir?**

**A. I am a truck driver.**

**Q. For whom?**

**Dixie Ohio Express.**

**Q. Do you know a man by the name of Robert Vick?**

**A. Yes, sir.**

**Q. How long have you known him, Mr. King?**

**A. Well, we were raised together, 39 years. I might be a little older than he is.**

**Q. Have you see much or little of him in your lifetime?**

**P. 938**

**You say you were raised with him?**

**A. Well, I had — I really had — when I really got to knowing him, you know, he run for councilman over there.**

**Q. Well, you have known him both as a child and grown? Is that right?**

*Testimony of James R. King*

A. Yes.

Q. Do you know or think you know his general reputation in the community?

A. Yes, sir, I believe I do.

Q. Is it good or bad?

A. Well, to be honest with you, I thought with the dealings that I had with him, and the way he had acted —

THE COURT: Just a minute. Give him instructions about that, will you please, sir?

MR. NORMAN: In court we have to answer it by, specifically first you have to say whether you know it, and you have said you know it. Now under the law, I have to ask you whether you know it or whether you don't, and a man's reputation is made up of two things: First what you know about him yourself, coupled with what you think a majority of the people who know him would say.

Do you understand? Reputation is two things: what you know yourself, together with what you think a majority

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of the people in the community who know him would say about him if called on to answer.

BY MR. NORMAN:

Q. Now, from that, do you think you know his general reputation?

A. I think I do.

Q. Is it good or bad?

A. Well, now, you want me to answer the way I feel or — I don't know what —

THE COURT: Just answer him good or bad.

BY MR. NORMAN:

Q. Good or bad?

MR. HOOKER: Now wait a minute, Your Honor.

THE COURT: And you may qualify it in any way you want to qualify it.

*Testimony of James R. King*

**MR. HOOKER:** May I make an exception? He stated, "Do you want to answer how I feel?" That is not the test.

**MR. NORMAN:** I explained it to him and he said he understood it.

**THE WITNESS:** You want the general idea of what the people thinks about him over there?

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**THE COURT:** Just a moment. He wants to know what his reputation is among his friends, neighbors, and acquaintances in the community he lives in. Do you know that reputation?

**THE WITNESS:** Yes, sir, I do.

**MR. NORMAN:** Is it good or bad?

**THE COURT:** Is it good or bad?

**THE WITNESS:** It is bad.

**BY MR. NORMAN:**

**Q.** State whether or not in your opinion he is entitled to be believed on his oath in a court of justice?

**A.** No.

**MR. NORMAN:** You may examine.

**THE COURT:** Now you are asking him particularly about his reputation for the quality of the truth and veracity, is that it?

**MR. NORMAN:** Well, I will ask him.

**BY MR. NORMAN:**

**Q.** What about his reputation for telling the truth, being a truthful, honest individual?

**A.** He is the biggest liar in the United States.

**MR. NORMAN:** That is all.

**THE COURT:** Is that what you think about him, or is

P. 941

that what his neighbors and friends say about him?

*Testimony of Charles F. Galbreath*

**THE WITNESS:** That's what his neighbors and all say about him.

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**CHARLES F. GALBREATH**

the next witness, being first duly sworn, was examined and testified as follows:

**DIRECT EXAMINATION**

**BY MR. NORMAN**

**Q.** State your full name in the record, please, sir.

**A.** Charles Ford Galbreath.

**Q.** Your address, please?

**A.** 727 Sumerly Drive, Nashville, Tennessee.

**Q.** You are a member of the Nashville bar, are you not, Mr. Galbreath?

**A.** Yes, sir, since 1947.

**Q.** And a member of the Davidson County delegation to the legislature, and have been for two sessions?

**A.** Since 1961.

**Q.** And up until your resignation some time ago, you had been elected Public Defender of Davidson County?

**A.** Yes, sir.

**P. 942**

**Q.** You are now back in active practice?

**A.** Yes, sir.

**Q.** Mr. Galbreath, do you know Robert Vick?

**A.** I have known Robert David Vick practically all my conscious life, we grew up together in East Nashville, in the same block.

**Q.** And both of you grew up together here?



*Testimony of Charles F. Galbreath*

A. Yes, except during the period of the war, I was in the service, and I think he was the last person I saw before I went in the service.

Q. And have you seen much or little of him since then?

A. After I got established here in Nashville, after I got through going to school, I saw a great deal of him.

Q. Mr. Galbreath, do you know the reputation of Mr. Robert Vick?

THE COURT: For what qualities, for truth and veracity?

A. Yes, sir.

BY MR. NORMAN:

Q. I will ask you now since you have stated you know it generally, state whether or not you know his reputation for veracity, truthfulness?

A. Yes, sir.

Q. Is it good or bad?

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A. He is one of the most convincing liars I have ever seen in my life. He can tell you a lie and tell it so convincingly —

MR. HOOKER: That's not responsive.

MR. NORMAN: All right.

BY MR. NORMAN:

Q. State whether or not on his oath he can be believed in a court of justice?

A. I wouldn't believe anything he said.

MR. HOOKER: Stand aside.

(Witness excused.)

MR. NORMAN: Mr. Ezell Williams.

*Testimony of Ezell Williams*

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**EZELL WILLIAMS**

the next witness, being first duly sworn, was examined and testified as follows:

**DIRECT EXAMINATION**

**BY MR. NORMAN:**

Q. State your name into the record.

A. Ezell Williams.

Q. How do you spell it?

A. E-z-e-l-l.

Q. Do you mind giving your age, Mr. Williams?

A. Forty.

Q. Where do you live, sir?

A. 845 South 8th Street.

Here in Nashville?

A. Yes, sir.

Q. How long have you lived here, Mr. Williams?

A. Here in Nashville?

Q. Yes sir.

P. 945

A. All my life.

Q. You are a man of family?

A. Yes, sir.

Q. What do you do?

A. I work for the Metropolitan government.

Q. The City of Nashville?

A. Yes, sir.

Q. Mr. Williams, do you know Robert Vick?

A. Yes, sir.

Q. How long have you known Mr. Vick?

A. Well, I have known him for about four and a half years.

**Testimony of Ezell Williams**

**Q.** Four and a half years. Have you come in contact with him a good bit during that time?

**A.** Yes, sir, he is my neighbor.

**Q.** Your neighbor?

**A.** Yes, sir.

**Q.** How far do you live from him?

**A.** He's not now, but he was up until about a year ago.

**Q.** How close did you live to him, then?

**A.** Oh, half a block.

**Q.** Do you know or think you know his general reputation in the community, Mr. Williams?

**A.** Yes, sir, I think I do.

**Q.** Do you know his reputation for truthfulness, veracity, telling the truth?

**A.** Yes, sir. I wouldn't believe him at all.

**Q.** Wait a minute. Say whether you know it or not.

**A.** Yes, sir.

**Q.** Is that good or bad?

**A.** It's bad.

**P. 946**

**Q.** State whether or not in your opinion he is entitled to be believed on his oath in a court of justice?

**A.** No, sir, he is not.

**MR. NORMAN:** That is all.

**MR. HOOKER:** Stand aside.

(Witness excused.)

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*Testimony of Joseph Ralph Staten*

**JOSEPH RALPH STATEN**

the next witness, being first duly sworn, was examined and testified as follows:

**DIRECT EXAMINATION**

**BY MR. NORMAN:**

Q. State your name into the record, please, sir.

A. Joseph Ralph Staten.

Q. S-t-a-t-e-n?

A. Yes, sir, that is right.

Q. And your age, please, sir?

A. Sixty.

Q. Where do you live, Mr. Staten?

A. 830 South Eighth Street.

Q. That's East Nashville, is it not?

A. Yes, sir.

Q. How long have you lived over there, Mr. Staten, in the general community?

A. About 16 years.

Q. And what do you do, please sir?

A. I am unemployed, disability, disabled to work.

Q. What did you do? What was your work?

A. A chef, cook. Years and years.

Q. You have been a chef for years and years and you have got a respiratory trouble?

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A. Yes, sir.

Do you know Robert Vick?

A. Yes, sir.

Q. How long have you known him?

A. Approximately six years.

Q. How did you come to know him, and where?



*Testimony of Joseph Ralph Staten*

A. He made a race for council out there, and I got acquainted with him at that time.

Q. And you know him in the community?

A. That is right.

Q. How long have you lived in that community over there?

A. In that community 14 years. Not at that address, now.

Q. In the same community is what I mean.

A. Yes, sir.

Q. Do you know or think you know his general reputation?

A. I do.

Q. Do you know his reputation for truthfulness and veracity?

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A. It is bad.

Q. First you have to tell me whether you know it.

A. Yes.

Q. Is it good or bad?

A. It is bad.

Q. State whether or not in your opinion he is entitled to be believed on his oath in a court of justice?

A. I wouldn't believe him under no circumstances.

MR. NORMAN: That is all.

MR. NORMAN: Stand aside.

(Witness excused.)

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MR. NORMAN: Is Carl Stewart here?

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*Testimony of Carl William Stewart*

**CARL WILLIAM STEWART**

the next witness, being first duly sworn, was examined and testified as follows:

**DIRECT EXAMINATION**

**BY MR. NORMAN:**

Q. What is your name, please?

A. Carl William Stewart.

Q. Is it "C" or "K" -a-r-l?

A. C-a-r-l.

Q. And how do you spell Stewart?

A. S-t-e-w-a-r-t.

Q. And your age, Mr. Stewart?

A. 39.

Q. Where do you live, sir?

A. 1000 Lenore Street.

Q. Where is Lenore?

A. In East Nashville.

Q. Are you a man of family?

A. Yes, sir.

Q. Where do you work?

A. Wilson Truck Company.

Q. How long have you been employed there?

A. Nine years.

Q. Do you know Robert Vick?

A. Yes sir, very well.

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Q. Do you know him in the community over there?

A. Yes, sir, I sure do.

Q. How long have you known him?

A. Approximately three and a half or four years.

Q. Do you know or think you know his general reputation?

*Testimony of Foster Douglas Williams*

A. I should know it by now.

Q. Do you? You have to say yes or no.

A. Yes, sir.

Q. Do you know his reputation for truthfulness and veracity?

A. I sure do.

Q. Telling the truth. Is it good or bad?

A. Very bad.

Q. State whether or not in your opinion he is entitled to be believed on his oath in a court of justice?

A. I wouldn't believe him in a court of justice or anywhere else, myself.

MR. NORMAN: That is all.

MR. HOOKER: Stand aside.

(Witness excused.)

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**FOSTER DOUGLAS WILLIAMS**

the next witness, being first duly sworn, was examined and testified as follows:

**DIRECT EXAMINATION**

**BY MR. NORMAN:**

Q. State your name into the record, please, sir.

A. Foster Douglas Williams.

Q. And your age, please, sir.

A. 39.

Q. And your address, please, sir?

A. 404 South 16th Street.

Q. That's in East Nashville?

A. East Nashville, yes, sir.

Q. Are you a man of family?

A. I have an adopted baby, yes, sir.

*Testimony of Foster Douglas Williams*

Q. A wife and adopted baby. You don't have any natural children?

A. Yes, sir.

Q. What is your business?

A. I drive a truck for the Wilson Turek Company.

Q. Do you know this gentlemen that works at the same place that was just on the stand?

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A. I got him his job.

Q. Do you know Robert Vick?

A. Yes, sir.

Q. How long have you known him?

A. We was raised together.

Q. You have known him in East Nashville over these years?

A. Yes, sir.

Q. Do you know his general reputation?

A. Yes, sir.

Q. Is it good or bad?

A. Bad.

Q. Do you know his reputation for truthfulness and reliability and dependability and veracity?

A. Yes, sir.

Q. Is it good or bad?

A. Bad.

Q. State whether or not in your opinion he is entitled to be believed on his oath in a court of justice?

A. No, I wouldn't think so, no.

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*Testimony of Jack W. Lee*

**JACK W. LEE,**

the next witness, having been first duly sworn, testified as follows:

**DIRECT EXAMINATION**

**BY MR. NORMAN:**

**Q. State your full name for the benefit of the record, please.**

**A. Jack W. Lee.**

**A. On Wayland Drive.**

**Q. Here in Davidson County?**

**A. Yes.**

**Q. Do you mind giving me your age?**

**A. Forty-six.**

**Q. And are you a man of family?**

**A. Yes.**

**Q. What is your business, Mr. Lee?**

**A. I am in real estate and mortgage loan business.**

**Q. Do you know the defendant, Tommy Osborn?**

**A. I do.**

**Q. How long have you known him, Mr. Lee?**

**A. Oh, Tommy and I have been close friends twenty years.**

**Q. Do you live close? Are you neighbors?**

**A. Across the street.**

**Q. Across the street. You have been in and out of his**

**P. 980**

**home?**

**A. Many times.**

**Q. You know his wife and children, the family?**

**A. His wife and children and my wife and children and my family are close friends.**

*Testimony of Macklin Davis*

Q. Do you know his general reputation in the community, Mr. Lee?

A. Yes, sir, I do.

Q. Is it good or bad?

A. It is good.

Q. Do you know his reputation for truthfulness and veracity?

A. I do.

Q. Is it good or bad?

A. It is very good.

Q. State whether or not in your opinion he is entitled to be believed on his oath in a court of justice?

A. He is.

MR. NORMAN: That is all.

MR. HOOKER: Stand aside.

(Witness excused)

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**MACKLIN DAVIS,**

the next witness, having been first duly sworn, testified as follows:

**DIRECT EXAMINATION**

BY MR. NORMAN:

Q. For the benefit of the record, Mack, state your full name.

A. Macklin Davis, Jr.

Q. And your age?

A. Thirty-seven.

Q. Are you married?

A. Yes.

Q. Have a family?

A. Yes.

*Testimony of Macklin Davis*

**Q. Where do you live, Mr. Davis?**

**A. I live on Lynwood Boulevard, 411 Lynwood Boulevard.**

**Q. Mr. Davis, do you know Tommy Osborn?**

**A. Know him well, yes, sir.**

**Q. How long have you know him?**

**A. Well, I have known him over — about seventeen years, I think, but known him very well for about fourteen years.**

**Q. Has that been close?**

**A. Yes.**

**Q. Intimate relations?**

**A. Practiced law with him and knew him very well socially.**

**P. 982**

**Q. Mr. Davis, do you know his reputation in this community?**

**A. Yes, I do.**

**Q. Is it good or bad?**

**A. It is very good.**

**Q. Do you know his reputation for veracity and truthfulness?**

**A. Yes, I do.**

**Q. Is it good or bad?**

**A. Very good.**

**Q. State whether or not in your opinion he is entitled to be believed on his oath in a court of justice?**

**A. Yes, he is.**

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*Testimony of Carlton Loser*

**CARLTON LOSER,**

the next witness, having been first duly sworn, testified as follows:

**DIRECT EXAMINATION**

**BY MR. NORMAN:**

Q. State your full name for the record, please, sir.

A. Carlton Loser.

Q. I am not going to ask you your age because it is too close to mine.

A. I hope you don't.

Q. It is too close to mine.

Carlton, how long have you lived in Davidson County?

A. All my life.

Q. And you are a man of family, of course — children and grandchildren?

A. Yes.

Q. Do you know Tommy Osborn?

A. Yes, I do.

Q. How long have you known him, Carlton?

A. I would say about twenty years.

Q. Have you known him closely?

A. Intimately.

Q. You I believe were the District Attorney here for how many years?

A. Twenty-seven years.

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Q. City — in the City Attorney's office before that?

A. Six years.

Q. Member of the Congress of the United States?

A. Six years.

Q. What is his reputation in this community, Mr. Loser?

A. Splendid.



*Testimony of James Cisco*

Q. Do you know his reputation for truthfulness — honesty?

A. I do.

Q. And integrity?

A. I do.

Q. Is it good or bad?

A. It is good.

Q. Is he entitled to be believed on his oath in a court of justice?

A. I would believe him either on his oath and un — without his oath.

MR. NORMAN: That is all. Thank you.

MR. HOOKER: Stand aside.

(Witness excused)

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**JAMES CISCO,**

the next witness, being duly sworn, was examined and testified as follows:

**DIRECT EXAMINATION**

**BY MR. NORMAN:**

Q. State your name for the record, please, sir?

A. James Cisco.

Q. Mr. Cisco, your age?

A. Twenty-four.

Q. And where do you live, sir?

A. I live on Chadwell Drive, in Madison.

Q. Mr. Cisco, I will ask you if you were one of those who were employed by Mr. Osborn to do some background investigation on some jury panels?

A. Yes, I was.

*Testimony of L. Kenneth Johnson*

Q. What were your instructions from Mr. Osborn with reference to that, Mr. Cisco?

A. I received a letter of instructions stating that I was to conduct investigation using the highest ethical standards and legal standards; and it also instructed me to get my information from attorneys, chiefs of police, and people of high standing in the community, such as that.

Q. Did you have a form to report those reports on?

A. Yes, sir, I did.

Q. And did you make your reports on them?

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A. Yes, sir.

Q. Did he ever ask you to make any personal contact or come in contact with any prospective juror in any way, shape, form or fashion?

A. No, sir, he did not.

MR. NORMAN: That is all.

MR. HOOKER: Stand aside.

(Witness excused.)

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MR. NORMAN: Is Mr. Kenneth Johnson here?  
Come around, Kenneth.

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**L. KENNETH JOHNSON,**

the next witness, being duly sworn, was examined and testified as follows:

**DIRECT EXAMINATION**

**BY MR. NORMAN:**

Q. Ken, would you please state your full name for the Court Reporter?

*Testimony of L. Kenneth Johnson*

- A. My name is L. Kenneth Johnson.
- Q. And I have to ask your your age. Anybody under my age I have to ask.
- A. Forty-two years of age.
- Q. And are you a man of family?
- A. Yes.
- Q. Where do you live?
- A. I live in Goodlettsville, Tennessee.
- Q. And what is your business?
- A. Attorney.
- Q. How long have you been a member of the bar?
- A. Since 1947.
- Q. Ken, do you know Tommy Osborn?
- A. Yes, well and favorably.
- Q. Have you known him closely and intimately?
- A. I feel I have.
- Q. Do you know his general reputation in this community?
- A. I do.
- P. 988
- Q. Is it good or bad?
- A. I would say its very good.
- Q. Do you know his reputation, Ken, for truthfulness, veracity and integrity?
- A. I have never heard a question. I believe it is excellent.
- Q. Is he entitled to be believed on his oath in a court of justice?
- A. Yes, sir.
- MR. NORMAN: That is all.
- MR. HOOKER: Stand aside.
- (Witness excused.)

*Testimony of Jessie T. Moore*

**MR. NORMAN:** Mr. Jessie Moore, please.

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**JESSIE T. MOORE,**

the next witness, being duly sworn, was examined and testified as follows:

**DIRECT EXAMINATION**

**BY MR. NORMAN:**

**Q.** State your name for the record, please, sir.

**A.** Jesse T. Moore.

**Q.** And your address?

**A.** 163 Delway Drive.

**Q.** And are you a man of family?

**A.** Yes, sir.

**Q.** Mr. Moore, you were for many years, until your retirement, a member of the Metropolitan Police Force, were you not?

**A.** Yes, sir.

**Q.** Were you one of those employed by Mr. Osborn to do background investigation?

**A.** Yes, sir.

**Q.** What were your instructions, Mr. Moore?

**A.** My instructions to —

**Q.** What were your instructions about how you were to make investigations?

**A.** Well, I had a form, and we went by that form.

**Q.** You have been in the courthouse, is that the same form that the other officers have testified about?

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**A.** Yes, sir.



*Testimony of Jessie T. Moore*

Q. Did you have any instructions about personal contact with prospective jurors?

A. I made no personal contact, even if we would see one we was investigating, to go on the other side of the street.

Q. Did he ever in any way request, or ask or in any fashion intimate that you should do anything wrong about it at all?

A. No, sir, he wanted it all as it was right.

MR. NORMAN: That is all.

MR. HOOKER: Stand aside.

(Witness excused.)

**STIPULATION RESPECTING TESTIMONY  
OF INVESTIGATORS**

MR. NORMAN: Mr. John Tolliver.

MR. NEAL: Your Honor, this appears to be another investigator. We, of course, object to this as irrelevant.

MR. NORMAN: Well, there are two of them — Mr. Hooker said yesterday he would stipulate. If you want to do it to save the time, we will do it.

MR. NEAL: If these are just more investigators, other than as to Vick and Beard, we will stipulate they will testi-

P. 991

fy the same way.

MR. NORMAN: All right. Put their names in the record as Mr. John Tolliver and Mr. C. H. Hynds, both of whom would testify that they were likewise employed for this background investigation, and that testimony would be similar to that of Mr. Cisco and Mr. Moore.

MR. NORMAN: Mr. Davis.

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*Testimony of John Paschall Davis*

**JOHN PASCHALL DAVIS,**

the next witness, being first duly sworn, was examined and testified as follows:

**DIRECT EXAMINATION**

**BY. MR. NORMAN:**

**Q. Will you give the record your full name?**

**A. John Paschall Davis.**

**Q. And where do you live, sir?**

**A. Here in Nashville, 1039 Tyne Road.**

**Q. How long have you lived in this community?**

**A. Since 1939.**

**Q. And with what church are you now affiliated?**

**A. Christ Episcopal Church, across the way.**

**Q. Across the street?**

**A. Yes.**

**Q. Do you know Tommy Osborn?**

**A. Very well.**

**Q. How long have you known him, Pastor?**

**A. Ever since the war, I would say I have known him intimately. That's World War II, about 19 —**

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**Q. Do you know his reputation in this community, Pastor?**

**A. I do.**

**Q. Is it good or bad?**

**A. It's good.**

**Q. Do you know his reputation for truthfulness and integrity and honor?**

**A. I do.**

**Q. Is it good or bad?**

**A. Very good.**

*Testimony of Samuel Felts, Jr.*

Q. In your opinion, is he entitled to be believed by his fellow countrymen on the jury?

A. Yes, sir.

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**CROSS-EXAMINATION**

BY MR. HOOKER:

Q. Pastor, before you entered the ministry you practiced law here in Nashville, didn't you?

A. Yes, sir.

Q. And Mr. Osborn was an associate in your firm for several years?

A. We were law partners together.

MR. HOOKER: That is all.

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**REDIRECT EXAMINATION**

BY MR. NORMAN:

Q. Did the fact that this took place have anything to do with it one way or the other, Pastor?

A. I would be glad to testify for him in either way.

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(Witness excused.)

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**SAMUEL FELTS, JR.,**

the next witness, being duly sworn, was examined and testified as follows:

**DIRECT EXAMINATION**

BY MR. NORMAN:

Q. Judge, state your full name to the court and record.

A. Samuel Felts, Jr.

Q. And do you mind stating your age?

A. Thirty-eight.

Q. You are a man of family, aren't you?

*Testimony of Samuel Felts, Jr.*

A. Yes, sir.

Q. What is your occupation or profession?

A. I am Judge of the Fifth Circuit Court of the Tenth Judicial Circuit of Tennessee.

Q. That's here in Davidson County?

A. That's right.

Q. I believe your father is Judge Sam Felts, Sr., of the Supreme Court of Tennessee?

A. Yes, sir.

Q. Judge, do you know Tommy?

A. Yes, sir.

Q. How long have you known him?

A. Since 1950, when I started practicing law.

Q. Have you known him closely and intimately, Judge?

A. Yes, sir, I served under him as an assistant city attorney.

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Q. You have known him through all these years?

A. Yes, sir.

Q. Do you know his reputation, Judge?

A. Yes, sir.

Q. Is it good or bad?

A. Is it good.

Q. Do you know his reputation for truthfulness, veracity, and integrity?

A. Yes, sir.

Q. Is it good or bad?

A. It is good.

Q. In your opinion can his neighbors, his jurors, believe him on oath?

A. Absolutely.

MR. NORMAN: That is all.

MR. HOOKER: No questions, Judge.

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*Testimony of Elkin Garfinkle*

**ELKIN GARFINKLE,**

the next witness, being duly sworn, was examined and testified as follows:

**REDIRECT EXAMINATION**

**BY MR. NORMAN:**

Q. State your name, your full name, for the record.

A. Elkin Garfinkle.

Q. You are another of my age, so I am not going to ask you.

How long have you been practicing law?

A. Since 1916.

MR. NORMAN: You very near told us how old you are.

THE WITNESS: It has been quite a long time.

**BY MR. NORMAN:**

Q. Do you know Tommy Osborn?

A. Yes, sir.

Q. How long have you known him?

A. I have known him over 15 years.

Q. Have you known him closely and intimately?

A. Yes, sir.

I have tried numbers of cases with him. We have tried them together, been associated together as joint counsel.

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Q. Do you know his reputation in this community?

A. Yes, sir.

Q. Is it good or bad?

A. It's excellent.

Q. Do you know his reputation for truthfulness and veracity?

A. Yes, sir.

Q. Is it good or bad?

*Testimony of Mac E. Robinson*

A. It's excellent.

Q. In your opinion, is he entitled to be believed under oath in the courtroom?

A. Yes, sir, I would believe him whether he takes an oath or not.

MR. NORMAN: That is all, thank you.

MR. HOOKER: No questions.

(Witness excused.)

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MAC E. ROBBINSON,

the next witness, being duly sworn, was examined and testified as follows:

**DIRECT EXAMINATION**

BY MR. NORMAN:

Q. State your name, your full name, for the record.

A. Mac E. Robinson.

Q. And your age?

A. 34.

Q. You are a man of family?

A. Yes, sir.

Q. Did I ask you your address?

A. 2908 Tyne Boulevard, Nashville.

Q. You are a lawyer, are you not?

A. Yes, sir.

Q. Mac, do you know Tommy?

A. Yes, sir. I have know him since 1955.

Q. Has that been a close intimate relationship?

A. Yes, sir, since about 1956 I have known him closely.

Q. Do you know his reputation in this community?

A. Yes, sir, I do.

Q. Is it good or bad?

**Testimony of Mac E. Robinson**

A. It is very good.

Q. Do you know his reputation for integrity?

A. Yes, sir.

P. 999

Q. Truthfulness?

A. Yes, sir.

Q. Veracity?

A. Yes, sir.

Q. Is that good or bad?

A. It is splendid.

Q. In your opinion, is he entitled to be believed under oath in a court of justice?

A. I would believe him under oath or not under oath.

MR. NORMAN: Thank you.

MR. HOOKER: Step down.

(Witness excused.)

THE COURT: Mr. Norman, that is 7, I believe. Do you have other here?

MR. NEAL: That is eight, Your Honor.

MR. NORMAN: Yes, sir, I have about 20 or 25.

THE COURT: I take it there would be no objection to the counsel reading the names and addresses into the record. That's going beyond the limits.

MR. NORMAN: I don't know if I can read the addresses.

P. 1000

I can read the names.

THE COURT: At least identify them.

MR. NORMAN: Walter Leaver.

Clarence Evans.

THE COURT: They don't seem to answer.

MR. NORMAN: Mr. Herb Rich.

*Testimony of Mac E. Robinson*

Will these names that I call please stand? I don't know who is here.

Mr. Herb Rich.

Mr. Jack Butler.

Mr. Earl McNab.

Mr. Carl Hardin.

Mr. Stan Chernau.

Mr. Vadin Lackey.

Mr. Doyle. Jack Doyle.

Mr. Charlie Rutherford.

Mr. George Linebaugh.

Mr. Harry Luster.

Mr. Harris Gilbert.

Mr. Bob Murphy.

Mr. Howsey.

Mr. Dave Rutherford.

Charles Rutherford.

Jim Rutherford.

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Buchanan Loser.

Judge Albert Williams.

Mr. Lawrence Dortch.

Howard Gibson.

If Your Honor please, what shall I do, just state that they are here, or ask him generally? Or How?

THE COURT: Well, it is stipulated, I presume, that each of these people —

MR. HOOKER: We make no question that they are here to testify to the good character of the defendant.

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THE COURT: All right. Take the jury out, Mr. Marshal.



*Testimony of Shirley R. Green*

(Whereupon, the jury withdrew, and the following proceedings were had out of the hearing and presence of the jury.)

MR. NEAL: May it please the Court, perhaps I am premature, but this is one of the men who allededly recorded a conversation with the witness Robert D. Vick and to my recollection there was no foundation laid for any impeaching testimony along that line.

My recollection is that the defendant Vick — or the Witness Vick — testified that he said substantially everything that Mr. Norman asked him. I assume I am correct in that.

MR. NORMAN: No, sir, you are just as wrong as you can be.

MR. NEAL: Well, then, it might be a good time to determine if there is a foundation.

MR. NORMAN: There has not been anything introduced about a foundation. I will be glad to ask him what I am

P. 1003

going to ask him in the absence of the jury, but it is not what you think it is going to be.

MR. NEAL: Oh, I thought this was one of the men.

MR. NORMAN: If the Court please, I will ask him before the jury comes in, so if he does want to object when he finds what it is, and he may want to object when he finds out what it is.

THE COURT: All right. Come around, Mr. Green.

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**SHIRLEY R. GREEN,**

the next witness, being duly sworn, was examined and testified as follows:

*Testimony of Shirley R. Green*

**DIRECT EXAMINATION**

**BY MR. NORMAN:**

**Q. What is your full name, please, sir?**

**A. Shirley R. Green.**

**Q. G-r-e-e-n?**

**A. Yes, sir.**

**And you age, please, sir?**

**A. 28.**

**Q. And your address?**

**A. 225 Hendricks Place, Indianapolis, Indiana.**

**Q. Mr. Green, do you know Harry Childress?**

**A. Yes, sir.**

**Q. Did he come to see you about a matter some weeks ago?**

**A. He did, sir, on Good Friday.**

**Q. Had you known him before?**

**A. Yes, sir.**

**Q. Where?**

**A. Harry Childress was a member of Local 135, and we had the company —**

**Q. That's the Teamsters Union in Indianapolis?**

**A. Right.**

**P. 1005**

**Q. And you had what, you say?**

**A. The company was on strike, and I knew him from the picket line. I handled the picket line.**

**Q. Did he tell you anyone had sent him to see you?**

**A. Yes.**

**Q. Who did he say had sent him?**

**A. Bobby Vick.**

**Q. Did you know Bob Vick at that time?**

**A. I had never heard of him before.**

*Testimony of Shirley R. Green*

Q. What did Mr. Childress tell you Vick sent him to you for?

A. Well, Mr. Childress told me that he had come back to Nashville after work played out in Indianapolis, and that he had ran into Bobby Vick on the street, and —

Q. A little louder.

A. And he had knew Bobby Vick from, well, about ten or 15 years, I guess, from the time he lived in Nashville. And he went into a part about Bobby Vick was a witness for the government in the Osborn trial, and that Vick had grown dissatisfied because he hadn't received any payments, or hadn't received the payments he was promised from the government, and he had information that could get Osborn out on the street and Hoffa a new trial. And he proceeded to tell me about these things.

P. 1006

Q. What did he tell you about that?

A. Well, he said that from what Vick had told him that he thought they could prove entrapment on the government's part as far as Vick being an agent for the government before the Hoffa trial was ever in progress.

Q. Had you ever heard anything about any of that before that?

A. No, sir.

Q. Before Childress came to you and told you Vick sent him?

A. It sounded so wild to me at the time I didn't know exactly what to do.

Q. All right. Did he say anything to you about what he had been promised by the government?

A. Yes, —

Q. What.

A. — he did.

Q. What did he say?

*Testimony of Shirley R. Green*

A. Well, he said that the government had put Vick on expenses of \$35 a day, I think he said. It had run for about a year and a half at that time, I think, or a year, somewhere along in there; and he had a certificate guaranteeing his children a college education, supposedly from Bobby Kennedy. He was promised a job with the Tennessee Corporation, Inc., in Chicago.

P. 1007

Q. You had never known or heard of Vick up until that time then, had you?

A. No, sir.

MR. NORMAN: That's what we want to ask.

MR. NEAL: Surely Mr. Norman can't think that is competent testimony. What this man says a man named Harry Childress told him?

THE COURT: You don't think this is admissible in this case, do you, Mr. Norman?

MR. NORMAN: Why, certainly. The Witness Vick has stated that this man was his agent and that he sent him up there. Vick has testified that himself. And then Vick — let me ask:

BY MR. NORMAN:

Q. Did Vick later come to you himself?

A. Vick came to my house on a Sunday morning, yes, sir.

MR. NEAL: Your Honor, there is no competent testimony at all about that.

MR. NORMAN: All we want is for the Court to rule on it.

MR. NEAL: That is right. And I don't see any question about it.

THE COURT: What is the materiality of it? We have P. 1008

heard a lot of testimony here about —



*Testimony of Shirley R. Green*

**MR. NORMAN:** Sir?

**THE COURT:** I say, we have heard a lot of testimony here from Mr. Vick about his meetings with these gentlemen connected with the Teamsters, and about what went on in Room 423 at the Holiday Inn, and all that. What are you getting right down to it now? What is the materiality of it?

**MR. NORMAN:** If Your Honor please, to show that Vick is trying to huckster his testimony. It reflects his credibility — to show he is a liar and a fraud.

**MR. NEAL:** Your Honor, anything he said outside of court could be used, of course, to impeach him if there was a prior inconsistent statement, and if Mr. Norman laid a foundation to impeach him. But beyond that, what Vick said outside of court is not competent testimony, and Mr. Norman must know it.

**MR. NORMAN:** I don't know that, or I wouldn't put it up there. I don't do like some other people do, put testimony up there that I don't think is competent.

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**THE COURT:** The witness Vick, as a matter of fact, admitted all these things, didn't he?

**MR. NEAL:** He said he made all these statements, and he said they weren't true. He testified to that on the stand.

**MR. NORMAN:** We are not precluded in this case by the direction of your witness Vick.

**THE COURT:** Well, if Vick admitted he said all these things, and did all these things, wherein is the issue concerning them? He was on the stand for quite a long time, and you read him a rather lengthy statement, Mr. Norman.

**MR. NORMAN:** Sir?

**THE COURT:** You read him several rather lengthy statements, and he never denied —

*Testimony of Shirley R. Green*

MR. NORMAN: Never denied and never admitted. Never denied and never admitted anything.

MR. NEAL: Your Honor, he admitted everything that Mr. Norman read to him was substantially, essentially, the words he used, accurate, and what he said.

THE COURT: Well, Mr. Vick was a rather confusing witness, to say the very least of it. To say now just what he  
P. 1010

did testify would be a rather difficult thing to do.

Again I don't want to restrict the defendant here if there is any question about these things.

MR. NEAL: Your Honor, this is testimony now, what this witness says is what somebody named Childress said that Vick said. But Vick admitted on the stand whatever Mr. Norman asked him.

THE COURT: Mr. Vick testified, the court recalls very distinctly, that Childress came to see him, they were on friendly terms, and that he engaged him in a conversation in the beginning about collecting money that was due him from the Teamsters by reason of his services in connection with his investigations of jurors during the Test Fleet trial. Mr. Childress agreed to go so far as to contact the defendant to see if he could collect that money. Vick promised to give him half of it, I believe. Vick testified to that.

MR. NEAL: Your Honor, the obvious man to call is this man Childress.

THE COURT: And he testified that he see about doing that, and the situation does indicate that he was Vick's man, at that time Vick's agent. Now if Childress brought

P. 1011

these people into the picture, under the circumstances of this case, I don't see that it is too important one way or the other, especially if — since there seems to be no particu-

*Testimony of Shirley R. Green*

lar dispute about it. It would be a rather risky thing for the Court to deny this witness the right to testify in this case, I think.

**MR. NEAL:** I just point out one thing, Your Honor. We can't possibly cross-examine this man and get the truth of the matter, or why statements were made, or anything like that. He is testifying third hearsay, what somebody named Childress told him that Vick said. And Vick has gone over, as Your Honor said, all of this before. What Vick said outside of the court can't be competent, unless it is used for impeachment. He is not a defendant.

We can't possibly cross-examine on this.

**Mr. Norman** said he was going to lay a foundation to bring these things on, and if he asked Vick if he said these things, then he could bring him on.

**MR. NORMAN:** I continued to ask him until the Court stopped me, and the transcript will show it.

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**THE COURT:** As I say, it is very confusing. In the beginning Mr. Norman did ask him specifically about a lot of things, and it seems to the Court that he did in the beginning undertake to deny certain things, and then he would neither admit nor deny, he would say he didn't remember. And the record is in such a state that it would be a rather risky thing in the Court's judgment to exclude this testimony. We will let it in.

Bring in the jury.

(Whereupon, the jury was escorted back into the Court Room, and the following proceedings were had in their presence and hearing:)

**THE CLERK:** Mr. Green, would you stand and raise your right hand?

**THE COURT:** He has been sworn.

Oh, it wasn't in the presence of the jury.

(Witness sworn in presence of the jury)

*Testimony of Shirley R. Green*

**DIRECT EXAMINATION**

**BY MR. NORMAN:**

**Q. State your name to the record, please?**

**A. Shirley R. Green.**

**Q. Mr. Green, so that no one will have to strain to hear you, would you talk up so His Honor, sitting over here, and**

**P. 1013**

**the jury, and the counsel can hear you?**

**A. Yes, sir.**

**Q. Your age, please, sir?**

**A. Twenty-eight.**

**Q. And where do you live?**

**A. Indianapolis, Indiana, 225 Hendricks Place.**

**Q. Do you know a man, who has been identified in this record as Harry Childress?**

**A. Yes, sir, I do.**

**Q. Did you know him in Indianapolis?**

**A. Yes, sir.**

**Q. How long have you known him?**

**A. About two years.**

**Q. Did he come to see you some weeks ago with reference to the matters which we are trying here, a man named Osborn?**

**A. Mr. Childress came to see me on Good Friday, April 27, I think.**

**Q. April 27. Where? In Indianapolis?**

**A. In the Indianapolis Union Hall.**

**Q. What did — did he tell you who had sent him to you?**

**A. He said that he came from Nashville, he had ran into Bobby Vick, who he had known for a long time.**

**Q. He had known Bobby Vick for along time?**

**A. Yes, sir.**



*Testimony of Shirley R. Green*

P. 1014

Q. All right.

A. He proceeded to tell me about the court case in Nashville where Vick was a witness for the government, and that Vick was a special FBI agent, and Vick, he told me that Vick was not satisfied with the way he was receiving his money from the government, and he said the things that Vick had told him could get Osborn on the street and Hoffa a new trial.

Q. Did you then talk to him?

A. Yes, sir.

Q. What did — what word did he tell you that Vick had sent word to you? What did he say?

A. I don't quite understand you, sir?

Q. You say he said that Vick had sent him to you?

A. (Witness nodded.)

Q. And you — and he told you that he had been working as an FBI agent or with the government. Did he tell you what Vick had been paid?

A. He said that Vick had — when the FBI first put him on as an agent he had been receiving \$35 a day and expenses, had been supposedly — supposedly had a piece of paper guaranteeing his children a college education.

Q. By whom?

A. By Bobby Kennedy. And he was supposed to be

P. 1015

guaranteed a lifetime job with the Kennedy Corporation, or whatever it is, in Chicago.

Q. Now, then, did you report that to anybody?

A. Yes, sir. While Childress was still there, we went across the street, got a cup of coffee. There was hardly anyone at the hall except me at that time, and another agent came in, Jim Nolan, and I called Jim over and Harry, Jim, and myself all went upstairs in the organizing office

*Testimony of Shirley R. Green*

and I told Harry to tell him the same thing he had told me, which he did.

Q. Did he?

A. He did. He added something to it.

Q. Did you later see Vick? Did Vick later come up there?

A. Yes, sir. We had a meeting scheduled with Harry Childress. We met him in Bowling Green. Jim called him. Well, Harry called me first, at Indianapolis, wanting to know if I had found out anything, supposedly from the International —

Q. That's after you had been up there and come back?

A. Right.

Q. He called you where?

A. He called me at the Indianapolis office, at the Teamsters Local 135 in Indianapolis, and wanted to know if I had talked to anybody. He had previously tried a couple of P. 1016

times to call Hoffa and he couldn't get him, and he said he had been in to see Osborn, but Osborn had told him that he wouldn't believe Vick on — in any state.

Q. Childress told you that he had been in to see Osborn and Osborn wouldn't have anything to do with him?

A. That is right.

And so we — he called me the Monday evening and we hadn't contacted anybody by that time, and the following Wednesday we met Childress — maybe it was the following Monday — we met Childress in Bowling Green, and he was supposed to come in to Indianapolis on the following Wednesday, and myself, Loran Robbins, Jim Nolan, and a local policeman of Indianapolis, was going to sit down and listen to him. Well, on Wednesday, Childress didn't show, so we didn't know what had happened. We called and couldn't get hold of him. Then he called us. We never heard any more until Sunday morning, the following Sun-

*Testimony of Shirley R. Green*

day I was reading the paper, the Sunday paper, and somebody knocked on the door and I went to the door and it was Childress. And he came in and he said —

Q. This is in Indianapolis now again?

A. Yes, sir, at my home.

And he come in and he said — we talked for a little bit, and he said, "I brought the man up here."

P. 1017

He said, "It's kind of hard for me to act as a go-between, so he just came along so he could speak for himself and say what's on his mind."

So Childress and Vick and another man who I didn't know was in the car. They left. They gave me a number at — it was supposed to be Vick's sister, who lives in Indianapolis, to call to see if I could set up a meeting.

I contacted Jim Nolan and Loran Robbins. We got together at Robbins' house, and I called Childress at Vick's sister's from there. Childress put Vick on the phone. We set up a meeting for four o'clock in the afternoon at Jim Nolan's house. I suggested we have it at the union hall, and Vick said, well, it wasn't too good a place, he would rather have it some place else. Jim Nolan had a meeting in Columbus that day at one, and I told him we could meet him in Columbus and that would be on his way back to Nashville.

He said that when he left one city going to another city he had to call some people, and I said, "You mean the FBI?"

And he said, "Yes." And he said, "It wouldn't be too good for me to meet you there."

He said, "As long as I am in Indianapolis they are not watching me too close and I could meet you here better than any place." So we set the meeting up at 4:00 o'clock.

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*Testimony of Shirley R. Green*

Q. That is going into too much detail. Did you all make arrangements to tape that conversation?

A. Yes, we did.

Q. Then Mr. Robbins was there, was he not?

A. Mr. Robbins, Mr. Nolan, myself.

Q. Then after that I will ask you if arrangements were then made to tape another meeting in Louisville, Kentucky, with Vick?

A. Yes, but I wasn't at this meeting.

Q. But you were not present?

A. No.

Q. Mr. Robbins, I believe, was there?

A. Yes.

MR. NORMAN: That is all.

**CROSS-EXAMINATION**

BY MR. NEAL:

Q. Mr. Green, you seem to know your testimony pretty well, including he said, we said, they said. Have you gone over this several times?

MR. NORMAN: We except to that, if Your Honor please.

THE COURT: You object, you say?

MR. NORMAN: Yes, sir.

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THE COURT: Objection overruled.

MR. NORMAN: Exception.

BY MR. NEAL:

Q. You purported to testify what Vick said at one time and what you said back, and that there was a meeting at Columbus and so forth. Have you gone over your testimony several times?

A. No, not several times. I have refreshed dates, is about all, like the 27th.



*Testimony of Shirley R. Green*

- Q. Have you refreshed—pardon me?
- A. Just dates. So far as testimony, there wasn't anything to refresh from, sir.
- Q. You just remember all this?
- A. Well, there's a lot more that was in it, too, but I gave the highlights of it.
- Q. You remember what you testified to, word for word?
- A. Yes, sir, what I testified to, yes, sir.
- Q. Where do you work, Mr. Green?
- A. I am a business representative for the Teamsters Union, Local 135.
- Q. A business representative for the Teamsters Union Local 135?
- A. Yes, sir.
- Q. You mean a business agent?

P. 1020

- A. Yes, sir.
- Q. You are a full-time paid employee of the Teamsters Union?
- A. That is right.
- Q. Pardon me?
- A. That is right.
- Q. You are paid by your members?
- A. That is right.
- Q. By members' dues?
- A. Yes, sir.
- Q. Now, when you—before you met Mr. Childress up there when you are talking about now, that was this year, I guess, when you met him?
- A. April—on Good Friday, yes, sir.
- Q. Had you received any calls from anyone with respect to Mr. Childress?
- A. No, sir.
- Q. No calls from anybody at all?

*Testimony of Shirley R. Green*

A. No, sir.

Q. Whom did you call after you met Mr. Childress?

A. I didn't call anyone. We met with Mr. Robbins, Mr. Nolan and our attorney, Mr. Fillenwarth.

Q. Fillenwarth?

A. Fillenwarth.

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Q. You talked to Mr. Bernard Spindel?

A. No, sir.

Q. Do you know Mr. Bernard Spindel?

A. No, sir.

Q. Have you ever seen him?

A. Not that I can recall, sir.

Q. Have you ever talked to Mr. Osborn?

A. Yes, sir.

Q. When did you talk to Mr. Osborn?

A. Last night.

Q. The first time you have talked to him?

A. The first time I ever met him.

Q. Over the phone or otherwise?

A. No, I met him in person.

Q. Last night?

A. Yes, sir.

Q. Had you met him before that?

A. No, sir.

Q. Talked to him before that?

A. No, sir.

Q. On the phone?

A. No, sir.

Q. You said there was another man in the car at this meeting. Now you know that was a United States Marshal?

P. 1022

A. I didn't know who it was.

Q. In the car with Mr. Vick?

*Testimony of Shirley R. Green*

A. Vick said it was his brother-in-law. I didn't know who it was.

THE COURT: Is that all?

MR. NORMAN: Yes, sir.

THE COURT: Now, for the jury's benefit, I know you are wondering about this type of testimony. The court understands it is offered for impeachment purposes. You will recall that Mr. Vick testified at some length about his various trips, to Indianapolis, Louisville, and maybe one other city. And the court recalls he more or less testified that he went to these places, had these conversations, with Mr. Childress, this gentleman, and others. The defendant contends that he denied certain parts of it, and as to whether he did will be for you ladies and gentlemen to say, for you are the sole and exclusive judges of the facts concerning this controversy.

But, as I say, the defendant seems to contend at this time that Mr. Vick denied certain parts, certain things, and this witness is produced to contradict him, so to speak, thereby raising a question of credibility insofar as Mr.

P. 1023

Vick is concerned. In other words, you will consider all of this testimony—I mean the testimony of this witness—in determining how much weight you will accord Mr. Vick's testimony in this case, you understand, as it is a question, as I say, of the credibility of the witness Vick.

Is that a fair statement of it, Mr. Norman?

MR. NORMAN: Yes, sir.

THE COURT: All right. You are excused.

(Witness excused.)

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MR. NORMAN: I will call Mr. Loran Robbins, please.

*Testimony of Loran W. Robbins*

**LORAN W. ROBBINS**

the next witness, being duly sworn, was examined and testified as follows:

**DIRECT EXAMINATION**

**BY MR. NORMAN:**

**Q. Would you please state your full name for the record?**

**A. Loran W. Robbins.**

**Q. R-o-b-b-i-n-s?**

**A. That's right, sir.**

**Q. And your address?**

**A. Route 4, Greenwood, Indiana.**

**Q. Mr. Robbins, what is your business?**

**A. I am Secretary-Treasurer of Teamsters Local 135, Indianapolis.**

**Q. How long have you lived in Indianapolis?**

**A. Indianapolis, about 1946. Or Greenwood, sir.**

**Q. Greenwood, how far is that from Indianapolis?**

**A. About 10 or 15 miles.**

**Q. That is a suburb of Indianapolis?**

**A. Right.**

**Q. Mr. Robbins, prior to some weeks ago did you ever know a man named Robert Vick?**

**P. 1025**

**A. No.**

**Q. Did you know a man named Harry Childress?**

**A. Yes, sir, I did.**

**Q. Some weeks ago did you get any information from Mr. Green about Mr. Childress or Mr. Vick wanting to see you?**

**A. Well, actually Mr. Nolan brought the matter to my attention first.**



*Testimony of Loran W. Robbins*

Q. That's the man that Mr. Green said he sent to you?

A. Yes.

Q. Could you tell us about when, the first you heard of that, when that was?

A. It was in April of this year, and as I recall, it was the Saturday after Good Friday, Mr. Nolan came to my house and discussed what Mr. Childress had told—

Q. Now, don't tell us what you discussed. It was about what Mr. Childress had told him?

A. About the meeting that Mr. Childress had with Mr. Nolan and Mr. Green.

Q. As a result of that did you attend a meeting in Indianapolis where Vick and Harry Childress were present, after they had come up there to see you all?

A. Yes, later on.

Q. And did you arrange or assist in the arrangements

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to have that meeting tape recorded?

A. Yes, sir, I did.

Q. Now, following that I will ask you if there was a meeting in Louisville, Kentucky, at which Vick and Childress were present, and when you were present?

A. Yes, sir, there was.

Q. Mr. Green was not there?

A. He was not there.

Q. Did you make arrangements to have that conversation, that conference, tape recorded?

A. Yes, I did, sir.

Q. And have you seen the transcription of that recording?

A. Yes, I have, sir.

Q. Have you been over it and verified it?

A. Yes, sir, until 3:00 o'clock this morning.

*Testimony of Loran W. Robbins*

Q. I want to ask you, Mr. Robbins, whether or not Mr. Harry Childress told you that he had been to see Mr. Thomas Osborn at the direction of Robert Vick, with reference to his testimony?

A. Yes, he had.

Q. What did he tell you was Osborn's reaction to it?

A. Mr. Osborn wanted nothing to do with him.

Q. Is that carried in detail in this transcript so the

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Court and jury can see it in detail if they wish, or hear it on the tape?

A. I believe it is.

Q. State whether or not Vick and Childress both told you that Vick — that Childress had tried —

MR. NEAL: Your Honor, this is very leading.

MR. NORMAN: Well, it has to be, on impeachment.

MR. NEAL: "State whether or not he told you so and so."

MR. NORMAN: On impeachment it has to be, "Did he tell you this, or this in substance?"

MR. NEAL: Your Honor, there has been no foundation laid. He testified he made these statements.

MR. NORMAN: On the contrary he denied that he went to Wallace.

THE COURT: As the Court recalls, Vick testified that these statements ascribe to him that are now under consideration were substantially correct.

MR. NEAL: That's right.

THE COURT: Essentially accurate, I believe are the words he used, all of it. But, again, his testimony was

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rather confusing to some extent.

*Testimony of Loran W. Robbins*

I think since this is in the nature of impeaching testimony it would be helpful if counsel would state exactly the proposition he desires to commit the witness on.

And he may lead him, he may do that, Mr. Neal, under the approved procedure.

But I don't believe there is any controversy about it, so far, between Vick and this witness. Again, the jury will be the judges of that.

MR. NEAL: Your Honor, do I understand—

MR. NORMAN: I believe your Honor is mistaken. Vick denied that he made this proposition to Wallace. He positively denied it.

THE COURT: Well, the jurors will be the judges of that. They are charged with that responsibility.

In view of your statement that he did deny that, then it is a proper matter on which to present impeaching testimony.

MR. NEAL: As I understand, this is the purpose: Mr. Norman says that the witness Vick denies certain things, and this witness is going to testify that he actually said it.

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Mr. Norman says that Vick denies that he said it. Now, I conscientiously say I don't remember Mr. Vick denying anything. He said everything you read to him, Mr. Norman, was substantially accurate.

MR. NORMAN: I am going to do this, Mr. Neal, I am going to give you a copy of this and let you check it with the tape, and just put it in the record.

MR. NEAL: No, that is not the point, Mr. Norman. The point is, what the Judge said, you should have this witness make a statement that Vick said he didn't make.

MR. NORMAN: Maybe we can save time. Do you admit into the record that Vick admits that he went to Wallace

*Testimony of Loran W. Robbins*

to get Wallace to go to Osborn to change his testimony?  
If you say that, I will——

**MR. NEAL:** Mr. Norman, don't make a jury speech at this time.

**MR. NORMAN:** I am not making a jury speech.

**MR. NEAL:** You are looking at the jury.

**MR. NORMAN:** I have to look in the direction of the jury to look at you.

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**THE COURT:** The Court will say again that I don't remember any discrepancy, as far as Vick's testimony is concerned, that calls for impeachment, but that is just the Court's opinion, and what the Court thinks about it is unimportant, it is what you ladies and gentlemen think about it.

Mr. Norman suggests here that the witness Vick —— and I say again his testimony was confusing, as we all are bound to agree —— Mr. Norman says that he denied certain things here. Now, this witness is produced to impeach him, contradict him, on that particular thing, and it is a question which goes to Vick's credibility as a witness; in other words, how much credit you will accord his testimony when you get back there in the jury room and put it in the ballots.

It is as simple as all that, and I think we are killing a lot of time here, gentlemen. Let's go ahead.

**MR. NORMAN:** Well, in view of your Honor's remarks that according to your Honor you remember that Vick did did not deny going to Wallace, as Wallace has testified, we will not proceed any further.

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**THE COURT:** Let me understand you, Mr. Norman. What was that?



*Testimony of Loran W. Robbins*

**MR. NORMAN:** I said in view of what I understood to be your Honor's statement, that the Court's memory was that Mr. Vick did not deny that he had been to Wallace to get Wallace to go see Osborn to change his testimony, and Mr. Neal says he didn't deny it—

**MR. NEAL:** I didn't say that. I said this witness had nothing to do with it. Put Wallace on the stand to impeach on that, if there is any impeachment. This witness had nothing to do with Wallace.

**THE COURT:** The Court did not express any opinion one way or the other about the Wallace angle on it. I didn't intend to.

**MR. NORMAN:** That's all.

**THE COURT:** The Court is entitled to express its opinion about the evidence in the case, so long as it is left to the jury in the last analysis.

**MR. NORMAN:** We are not objecting to it, if your Honor please. We are agreeing that since your Honor said it, it makes is unnecessary for us to proceed with this

P. 1032

witness. We are agreeing with what your Honor said.

**THE COURT:** All right, are you through with this witness?

Do you want to examine him?

**MR. NEAL:** Stand aside.

(Witness excused.)

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**DEFENDANT'S OFFER OF TAPE RECORDING**

**THE COURT:** Who is next, gentlemen?

**MR. NORMAN:** Now, if the Court please, we wish to offer this record of the transcription in evidence.

**THE COURT:** Which one is that, the—

*Testimony of Loran W. Robbins*

**MR. NORMAN:** The Louisville, the one that he took in Louisville.

**THE COURT:** Well, that is stipulated to, isn't it gentlemen?

**MR. NEAL:** Well, Your Honor, to offer into the record statements of a tape recorded conversation in Louisville? The government can't see for what purpose it would be. Does Mr. Norman propose that this is impeachment of something that Vick said?

The only purpose would be to show an inconsistent statement, and there was no — he said he made these statements.

**THE COURT:** Well, again there seems to be some difference of opinion here as to whether these statements were inconsistent or not. And it would be for the jury, as I say, to say whether they were inconsistent or not, and if so, what the facts are about it in the light of all this testimony.

This is a transcription of what took place in a room in P. 1034

Louisville, Kentucky.

**MR. NEAL:** May I point out, Your Honor, Mr. Norman didn't apparently purport to ask the witness Vick, or read from that transcription, he read from one in Nashville.

**MR. NORMAN:** I asked him a dozen questions about that.

**MR. NEAL:** He hasn't pointed to us anywhere in the record where there is any inconsistency. It looks to me like he could go back and say on page 200 and something, Vick denied that he made the following statement, and here it is.

**THE COURT:** The Court didn't understand there was any particular controversy about this transcription, but I doubt if it has any place in the record. I doubt that.

*Testimony of Loran W. Robbins*

If you gentlemen can enlighten the court a little bit on the proposition, why——

MR. NEAL: We don't want to seem to be objecting, Your Honor, but as Your Honor said, it hasn't any part in the record, and it is our obligation to see that the record has in it what should be in it. We have never seen it, I have no idea what is in that record.

THE COURT: Do you object to that transcription going P. 1035

in? I thought you gentlemen were in accord on it.

MR. NORMAN: I thought so all the time. At Your Honor's direction, I started out asking questions on this, and then I quit and went to the transcript, and I didn't know there was any question about it.

THE COURT: The Court recalls distinctly that you agreed that the Holiday Inn transcript would go in.

MR. NEAL: We distinctly agreed that he could read it, and if there was any inconsistency——

THE COURT: And then after he read it, it was tendered to you. Have you checked it in the meantime? It was tendered to you with the remark that it would be offered in evidence, as I recall.

MR. NEAL: Your Honor, the transcript is not to be offered in evidence; it is entirely incompetent unless the witness denies that he made some statement, then that transcript could be used to prove that he made some statement.

I think we are in accord on that. The point we are making is to put a 200-page transcript into the record, when he didn't deny making these statements, I think, is incompetent.

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*Testimony of Loran W. Robbins*

**THE COURT:** We get back to the same proposition, Mr. Neal, that the Court has commented on several times here in the discussion. There may be some question, there may be, and in view of Mr. Vick's—the nature of his testimony, and the way in which he delivered his testimony from the witness stand, and that will be for the jury. I am unloading it on the jury, in other words.

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**MR. NEAL:** Well, it is all unloaded on the jury. I agree with that.

**THE COURT:** And that is the situation, as the Court—

**MR. NEAL:** But I have not checked—

**THE COURT:** Let that record be identified. It it in, if that is the record of that Louisville meeting, and there seems to be no question about that.

**MR. NORMAN:** Defendant rests, if Your Honor please.

**MR. NEAL:** Of course, Your Honor, we have never seen that. He has not introduced it in evidence.

**THE COURT:** Well, that was the record he read.

**MR. NEAL:** No, Your Honor. No, Your Honor.

**THE COURT:** He read the one from the Holiday Inn and he read the one from—the other one.

Am I correct about that, Mr. Norman?

**MR. NORMAN:** Didn't read from that other one, asked him questions about it.

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**THE COURT:** Ask him questions about it?

**MR. NORMAN:** Yes, Sir.

**THE COURT:** Well, that makes a little difference, then. We may get it straight, after all.

**MR. NEAL:** As I say, he never laid the foundation—

**THE COURT:** That makes it a little different.

The Court will rule that out, then, after all, that record from the Louisville, Kentucky, meeting between Mr. Vick



*Testimony of Loran W. Robbins*

and these gentlemen who represent the Teamsters.

MR. NORMAN: All right. And we respectfully except.

THE COURT: All right.

MR. NEAL: Defendant rests!

THE COURT: Will there be rebuttal?

MR. NEAL: Yes, Your Honor, but Mr. Norman and I talked about this, and he said he would fairly be going all morning.

THE COURT: Well, we have been going an hour and a half. How much time—?

MR. NEAL: I believe we will need an hour.

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MR. NORMAN: It is all right with me.

THE COURT: Here is what—now, gentlemen, we are working on a holiday, and we have done it many times, and we want to finish this case today, gentlemen.

MR. HOOKER: Any rebuttal we will have, if Your Honor please, will be very short. I am sure we will finish it well before noon if Your Honor will give us an hour, before noon, anyhow, if Your Honor will give us an hour.

THE COURT: Well, try to take half an hour and let the Court know when you are ready.

MR. HOOKER: All right.

THE COURT: If you have to have the hour, we will let you take it.

MR. HOOKER: All right.

THE COURT: We do want to finish this case and get it to the jury today.

MR. HOOKER: We can do so, I think, by noon.

THE COURT: All right. Take the jury out for a short recess, Mr. Marshal.

(Recess)

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*Testimony of Judge Frank Gray, Jr.*

**REBUTTAL BY GOVERNMENT**

**JUDGE FRANK GRAY, JR.,**

the next witness, having been first duly sworn, testified as follows:

**DIRECT EXAMINATION**

**BY MR. HOOKER:**

Q. Would you state your full name, please, sir?

A. Frank Gray, Jr.

Q. What position do you occupy at the present time, Judge Gray?

A. I am United States District Judge for the Middle District of Tennessee here in Nashville.

Q. And is this the courtroom that we are presently in the courtroom over which you normally preside?

A. Yes, it is.

Q. When did it first come to your attention that the Government had any information—

MR. NORMAN: Just a minute, if Your Honor please. I don't believe this is rebuttal testimony, now.

THE COURT: Let's see what it is.

MR. NORMAN: Let the jury be excused.

THE COURT: Confine it to rebuttal, of course.

MR. HOOKER: I will confine it to the proposition, if

P. 1055

Your Honor please, of whether there was any entrapment or not.

MR. NORMAN: Of course, that is a legal question to be determined by the jury.

MR. HOOKER: He can state the facts, though.

MR. NORMAN: The Judge can't come in court and come—

*Testimony of Judge Frank Gray, Jr.*

MR. HOOKER: Oh, yes. We want to show what information the Government had at the time the tape recording was authorized.

MR. NORMAN: We except to this and ask the jury be excluded.

THE COURT: Let's see what this is you are asking him, Mr. Hooker.

Confine it to rebuttal.

MR. NORMAN: We except to this testimony before the jury.

(By Mr. Hooker:)

Q. When did it first come to your attention that the Government had any information about an effort to tamper with the jury?

A. On Friday, in the afternoon, November the 8th of P. 1056

last year.

Q. Were you furnished at that time any document?

A. Yes, I was furnished with an affidavit.

MR. NORMAN: We except to this, if Your Honor please. This could have been proven in chief.

MR. NEAL: Your Honor, you can't prove—you can't rebut entrapment until the defense is raised.

MR. NORMAN: Well, if Your Honor please, the Government is aware the testimony could have been produced in chief.

THE COURT: The objection is overruled.

MR. NORMAN: We most respectfully except.

Q. Is that the affidavit that was furnished to you, Judge Gray, or a photostated—or duplicate of it?

A. Yes, sir, it is a photostat of the one that was furnished to me by you and Mr. Neal.

Q. Was there or not—was it or not made a part of the record of the disbarment proceeding?

*Testimony of Judge Frank Gray, Jr.*

A. Subsequently, yes.

MR. HOOKER: We would like to offer this as Government's Exhibit number—

THE CLERK: 17.

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MR. HOOKER: Number 17, and offer it in evidence.

THE COURT: Let it be received.

(Thereupon, said document was marked as Government's Exhibit number 17 and was received in evidence.)

Q. Judge, would—

MR. NORMAN: Exception.

Q. Do you have any objection to reading this? Or will I read it myself, either one.

MR. NORMAN: We most respectfully except.

MR. HOOKER: This is an affidavit, ladies and gentlemen of the jury, of Robert D. Vick.

(Reading)

"Robert D. Vick, being first duly sworn, states:

"On October 28, 1963, Z. T. Osborn, attorney for James R. Hoffa, asked me if I would undertake employment by him to investigate the present jury panel of the Federal Court, commencing with juror number 175. I agreed to do so. I telephonically communicated this fact to Walter P. 1058

J. Sheridan of the United States Department of Justice. I had previously told Mr. Sheridan that it was possible that I would be asked to conduct such an investigation and that, in my opinion, it was likely that I would eventually be asked to participate in illegal tampering with prospective jurors. During this telephone conversation, Mr. Sheridan told me that if I should acquire knowledge of intended or actual illegal activity on the part of the defendants or their agents, as a result of my association



*Testimony of Judge Frank Gray, Jr.*

with or employment by the defendants or their agents, that I should immediately report this to him.

"Mr. Sheridan told me that he was not interested in and did not want me to report to him anything other than illegal activities on the part of the defendants or their agents.

"In accordance with Mr. Osborn's directions, I began an investigation of the petit jury panel commencing with juror number 175.

"On November 7, 1963, I was in Mr. Osborn's office going over the results of my investigation. I was aware that the jury panel which I had been investigating was the panel assigned to Judge William E. Miller. Mr. Os-

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born and I got into a discussion of the jury panel assigned to Judge Frank Gray, Jr. This jury panel list had previously been shown to me by John Polk, an investigator for Mr. Osborn. Polk told me at that time that he was investigating the jury panel assigned to Judge Gray. At that time, I mentioned to Polk that I knew three of the people on the jury panel. In discussing the panel with Mr. Osborn, I again mentioned that I knew three of the people on the jury panel. Mr. Osborn said, "You do? Why didn't you tell me?" I told Mr. Osborn I had told John Polk and assumed that John Polk had told him. Mm. Osborn said that Polk had not told him and suggested that we discuss the matter further. We then left Mr. Osborn's office and walked out onto the street to discuss the matter further. Mr. Osborn asked me how well I knew the three prospective jurors. I told him that I knew Mr. Ralph A. Elliott, Springfield, Tennessee, the best since he was my cousin. Mr. Osborn asked me whether I knew him well enough to talk to him about anything. I said that I

*Testimony of Judge Frank Gray, Jr.*

thought I did. Mr. Osborn then said, "Go contact him right away. Sit down and talk to him and get him on our side. We want him on the jury." I told Mr. Osborn that I thought Mr. Elliott was not in very good financial position and Mr. Osborn said, "Good, go see him right away."

"Immediately following my conversation with Mr. Osborn, I went to a pay phone at Third and Russell Streets, Nashville, Tennessee, and made a collect call to Walter J. Sheridan in Washington, D. C., and advised him of my conversation with Mr. Osborn."

Signed—"Robert D. Vick.

"Sworn and subscribed to before me this 8th day of May, 1963.

"John E. Hamlin, Notary Public, State of Tennessee at Large.

"My commission expires January 22, 1966."

MR. NEAL: Mr. Hooker, you made one error there. The thing is dated the 8th of November, not May.

MR. HOOKER: Did I say May? Correct that one, the P. 1061

May date. This is dated by the Notary Public November 8, 1963.

(By Mr. Hooker:)

Q. And it contains also the certificates, does it not, of the Clerk of the Court of Appeals?

A. Yes, sir.

MR. HOOKER: We would like to pass this, if Your Honor please—we would like to pass this document to the jury, if Your Honor please.

(Exhibit passed to jury for examination.)

Q. Now, Judge, after this matter was brought to your attention and you had seen this affidavit, what did you do?

MR. NORMAN: If Your Honor please, we except to that. It is not in rebuttal of a thing in this case.

*Testimony of Judge Frank Gray, Jr.*

**THE COURT:** Well, this defense of entrapment, particularly as it relates to the first count, is more or less an affirmative defense.

**THE WITNESS:** Mr. Hooker, let me—

**THE COURT:** (Continuing) With that in mind, I would think clearly this would be rebuttal.

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**MR. NORMAN:** Exception.

**THE COURT:** It is true some of it has come out in chief. But let's see further, now, what counsel has in mind. Go ahead.

A. If I may state there what happened that afternoon, I had been out of my office and came in about—oh, about four o'clock, I think. I had been to the barber shop and was advised by my secretary that Judge Miller and you and Mr. Neal had been attempting to locate me, and she had made a couple of phone calls to do so. And I called Judge Miller's office at that time and was informed that he had left to go home.

In a few minutes, you did come in with Mr. Neal and brought this affidavit to me and told me that you had taken a—

**MR. NORMAN:** Just a minute, if Your Honor please. I except to what Judge Gray—

**THE WITNESS:** All right.

**MR. NORMAN:** Mr. Hooker, I am objecting to his Honor. Conversations between them—

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**MR. HOOKER:** We submit we are entitled to show what occurred, if Your Honor please.

**MR. NEAL:** Your Honor, entrapment involves activities of Government officers. And we are entitled to show what the activities were.

*Testimony of Judge Frank Gray, Jr.*

**THE COURT:** I think so.

**MR. HOOKER:** Again, I think——

**MR. NORMAN:** Trying to convict——

**A. (Continuing)** And at that time you told me that—— you and Mr. Neal advised me that you did propose, if Judge Miller and I authorized it, to conduct further investigation in the matter to determine whether it was true or false —— these charges that were made, and that you were proposing to send this man Vick back to Mr. Osborn's office, or, at least, to talk to Mr. Osborn with a tape recorder.

**MR. NORMAN:** Judge, excuse me.

I don't understand. Who proposed that? Mr. Hooker, was it?

**A.** Mr. Hooker and Mr. Neal told me the Department of Justice proposed to do that. They proposed to send Vick back to Mr. Osborn with a tape recorder taped to his back to have further conversation to determine whether there

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was anything to these charges or not.

I telephoned Judge Miler at his home. We conferred about the matter. He was of course familiar with it beforehand. And we agreed that since the accusation had been made that involved an attorney, an officer of the Court, that it was necessary for additional investigation to be made to determine whether the charges were true or false. And at that time I told you that, as far as I was concerned —— and Judge Miller had previously done the same thing, I understand —— I told you that as far as I was concerned it would be entirely proper and I would authorize the procedure outlined, that is, the tape recorder to be taped to the back of this man, under the supervision of FBI agents, and surveillance would be maintained on him to be sure where he did go and that he came back.



*Testimony of Judge Frank Gray, Jr.*

And that was the end of it at that time.

Q. Did or not I tell you at that time that neither Mr. Neal nor myself believed that the charge was true?

A. Yes, sir, you did.

Q. And then was a tape recording — was it later obtained and has been offered to the jury, and I won't go into that — you have heard it, have you not, yourself?

A. Yes, sir, I have heard it, too.

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MR. HOOKER: That is all.

MR. NORMAN: That is all.

(Witness excused).

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MR. HOOKER: Call Judge Miller — Judge William E. Miller.

MR. NORMAN: Is Judge Miller's testimony the same as this? If it is, we will stipulate his testimony will be the same.

(Counsel confer)

MR. HOOKER: There will be some difference, if Your Honor please, not on differences of what he said, but some of additional facts that we will want to show by Judge Miller.

MR. NORMAN: We will make the same — or renew our exception.

MR. HOOKER: I think he was on the bench, if Your Honor please, and may be just a minute.

THE MARSHAL: He is on his way, Your Honor.

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*Testimony of Judge William E. Miller*

**JUDGE WILLIAM E. MILLER**

the next witness, being first duly sworn, was examined and testified as follows:

**DIRECT EXAMINATION**

**BY MR. HOOKER:**

Q. Is this the Judge William E. Miller?

A. Yes, sir.

Q. Are you the Chief Judge of the United States District Court for the Middle District of Tennessee?

A. Yes, sir.

Q. Judge Miller, in order to move along, did you, along with Judge Gray, make any authorization about tape recordings?

A. I did.

Q. Will you just state to the jury what that was?

A. Well, this matter came to my attention, as I recall it, on November 8, last year, in the form of an affidavit from a person by the name of Robert Vick, a person whom I did not know.

The affidavit contained information which reflected seriously upon a member of the bar of this court, who had practiced in my court ever since I have been on the bench. I decided that some action had to be taken to determine whether this information was correct or whether it was false. It was the most serious problem that I have had to deal with since I have been on the bench.

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I could not sweep it under the rug.

So I therefore decided that the best course to take was to allow a tape recorder to be used which would either

**Testimony of Judge William E. Miller**

clear this man or would prove that he was guilty. So I did authorize it.

**Q.** Now, the first time that the tape recorder was sent in, was it successful?

**A.** As my recollection is, that was not successful the first time.

**Q.** And then did Mr. Neal and myself come back to see you again?

**A.** He did.

**Q.** And ask you what to do about it?

**A.** Yes, sir.

**Q.** What did you say on that second occasion?

**A.** I said on that second occasion the same as I did on the first occasion: that the tape recorder should be used under proper surveillance, supervision, to see that it was not faked in any way, and to take every precaution to determine that it was used in a fair manner, so that we could get at the bottom of it and determine what the truth was.

**Q.** And then that was done?

**A.** Yes, sir.

**Q.** And you subsequently heard the tape recording yourself?

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**A.** Yes, sir.

**Q.** And when this affidavit was first presented to you, did Mr. Neal and myself both say that we didn't believe it was true?

**MR. NORMAN:** We object to that.

**MR. HOOKER:** All right, That is all.

**MR. NORMAN:** That is improper.

**THE COURT:** He has withdrawn that. Any cross-examination?

*Concluding Motions*

**MR. NORMAN:** That is all.

**THE COURT:** Thank you, Judge. That is all.  
(Witness excused.)

**MR. HOOKER:** That's the Government's case, if Your Honor, please.

**MOTION FOR JUDGEMENT OF ACQUITTAL  
AND TO STRIKE**

**THE COURT:** There will be a renewal of the motion at this time?

**MR. NORMAN:** Yes, Your Honor.

**THE COURT:** Ladies and gentlemen, it will be necessary at this time that the Court take up some legal matters. I suggest — 1:30 would give us an hour and 40 minutes. I suggest that we be ready for you ladies and gentlemen again at 1:30. That will give us time to dispose of our legal matters. Mr. Marshal, have the jury back promptly at 1:30.  
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(Whereupon, the jury withdrew from the court room and the following proceedings were had out of their presence and hearing:)

**THE COURT:** All right, Mr. Norman, you do desire to renew your motion at this time?

**MR. NORMAN:** First, if the Court please, the defendant moves to strike the testimony of Judge Gray and Judge Miller, and to instruct the jury not to regard their testimony, for the reason that, first, it was testimony in possession, clearly in possession of the government which could have and should have been introduced in chief, and was in rebuttal of not one single thing the defendant put forth, whatsoever.



*Concluding Motions*

**THE COURT:** Mr. Norman, the Court seems to recall at this time that you specifically objected to the introduction of that affidavit of Vicks.

Am I correct about that?

**MR. NORMAN:** Because Vick had testified to it himself.

**THE COURT:** And that was the only——

**MR. HOOKER:** I am not positive about that, Your Honor.

**THE COURT:** And that was an exhibit in the proceed-

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ing, the only exhibit in the proceedings, in Judge Miller's chambers, it was the only thing in that hearing that you did object to.

But the Court has already stated that the defense of entrapment is in the nature of an affirmative defense, and the government was not bound to undertake to introduce proof concerning that defense until it was actually asserted.

The thing about orderly procedure, that would be the court's reaction to that. The testimony was proper rebuttal, I think.

**MR. NORMAN:** We respectfully except.

**MR. NEAL:** The government would be willing for you to charge that the affidavit not be taken for the truth of the matter, but merely the information upon which the government acted. That's the reason we offered it.

**THE MARSHAL:** Your Honor, I was notified by the jurors that only six of them got the opportunity to see it and the rest of them would like to see it.

**THE COURT:** They will be given an opportunity to see it when they come back.

Anything further?

**MR. NORMAN:** No, sir.

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*Concluding Motions*

**THE COURT:** Let the record show the motion is overruled.

Now, if you gentlemen have special requests for instructions, if you will just pass them in to the court at this time the court will give you a ruling on them promptly when we reconvene, and it will give me an opportunity to read them.

**MR. NORMAN:** May it please the Court, I have the original at my office, but here are the copies.

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AFTERNOON SESSION

**THE COURT:** Will you gentlemen come to the bench if you will, at this time, for a brief discussion of these special requests?

This will be informal and off the record just a moment, Mr. Reporter.

(Discussion off the record was held at the bench.)

COURT ACTION ON REQUESTS  
FOR INSTRUCTIONS

**THE COURT:** Let the record show the defendant has tendered 44 special requests for instructions, all of which have been duly considered by the court and marked refused.

Let the record show defense counsel excepts to the Court's action in refusing all of the special requests tendered by him.

Let the record show that the Court will give special requests Nos. 3, 5, 9, 11, 13, 16, and 17, tendered by the government. The other government special requests tendered at this time are refused by the Court.

Now, Mr. Norman, I suggest that you delay until after the general charge before stating your reasons for your exceptions into the record. I believe the rules require that

*Concluding Motions*

you do that and the Court has in mind that you might like  
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to withdraw some of these if you agree they are covered  
in the general charge.

**THE COURT:** All right, you gentlemen may make your  
arguments, if you are ready.

**MR. NEAL:** The government is ready, Your Honor.

**SUMMATION ON BEHALF OF THE GOVERNMENT**

**MR. NEAL:** May it please the Court. Ladies and gentlemen of the Jury. It is fitting that I thank you for your patience, and the good grace with which you have heard the witnesses here, both those offered by the government and those offered in behalf of the defendant.

You had to sit there because you were summoned and you had to do your duty. You did it in good grace, with

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patience, and for that, we thank you.

It is fair that I tell you that what I say right now will not be evidence on which you should base your verdict. Nor what Mr. Norman says when he gets up to address you, or Mr. Hooker. What they say will not be evidence. It will be what we all remember the evidence to be, refreshed as we are by reviewing the transcript. I am sure that either Mr. Hooker, Mr. Norman, or I will cautiously—

**COURT REOPENS GOVERNMENT CASE**

**THE COURT:** Mr. Neal, I am about to overlook something here.

It has been called to the Court's attention that just before the noon adjournment that some of the jurors had not inspected a certain exhibit, and it has been read to them, and I don't think it won't require but just a few minutes to let those jurors, those on the back row, I believe, read it.

Is that agreeable to everybody?

*Summations by Government*

**MR. NEAL:** It is agreeable to the government.

**THE COURT:** We did say that we would afford the jurors that privilege if they desired to see that affidavit.

**MR. NORMAN:** It is all right with the defense.

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**THE COURT:** Pass it to them.

**MR. NEAL:** Would Your Honor like me to wait? I prefer to.

**THE COURT:** It would be a good idea, yes, sir.

(Whereupon, a document was passed to the Jurors to peruse.)

**SUMMATIONS BY GOVERNMENT**

**MR. NEAL:** May it please the Court, I had stated that what I say, what Mr. Hooker says, and what Mr. Norman says, all this point will not be evidence. You have heard all the evidence on which you must render your verdict. It will be what we remember the evidence to be.

Likewise, it will be necessary to discuss the law that you will apply to the evidence, to some extent, but again, fairness dictates that I say to you that what I say or what Mr. Norman says or what Mr. Hooker says will not be the law that you are to apply. Under our system of justice, the jury determines the facts, yourself, and His Honor, the Judge, instructs you as to what the law.

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There is not one iota of evidence in the record that the government did anything with respect to Mr. Vick except, "Do your duty as a citizen and report to us any illegal activities you might learn."

Now, in October of 1963, Vick was retained by Mr. Osborn to do another investigation of prospective jurors.



*Summations by Government*

And then comes the fateful day of November 7, 1963. According to this affidavit, which you have just read, he has a conversation with Mr. Vick—Mr. Vick has a conversation with Mr. Osborn, in which he tells Mr. Osborn that he has a cousin on the jury. He says Mr. Osborn asked him, "Why didn't you tell me before?"

And he says, "I told the other investigator, John Polk."

He tells him he has two or three people on the jury that's going to try the second Hoffa case, and Mr. Osborn says, "Good," jumps up, "Good, which one do you know best?" They go outside and talk. "Which one do you

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know best?"

He says, "I know Ralph A. Elliott of Springfield. He is my cousin."

And then, according to the affidavit on which the judges acted, Mr. Osborn told him, "Go contact him right away. Sit down and talk to him. And get him on our side. We want him on the jury."

Now, ladies and gentlemen of the jury, Vick then left Mr. Osborn's office and the offense was complete.

He went to the telephone, he called Mr. Sheridan in Washington, D. C.

This is November 7, 1963.

The very next day this affidavit you have just seen was submitted to the FBI, and then by the FBI to the judges.

In order to confirm or disprove what's in the affidavit, the judges authorized the FBI to put a tape recorder on Vick and sent him back in to have another conversation with Osborn.

Now, I may ask—you may ask at this point: "Well, why did the court feel it necessary to put a tape recorder on a man and send it back in to have a conversation?"

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*Summations by Government*

Well, consider this. Just put yourself in the place of the FBI and the court at that time. They had just gone through a trial in which Osborn was attorney for Hoffa, and which, according to his own admission, he was in court when the judges struck three jurors from the jury box during the first Hoffa trial because there was evidence that they had been tampered with, or there had been attempts to tamper with them. He admitted that. After all, this was the man sitting in there listening to all of that, and listening to the fact that the judges said, "Thank goodness no lawyer is involved. I don't have that problem."

This was after the government had been warned some four or five months before that Mr. Osborn had made an attempt to approach Mrs. Harrison. All this information. And then comes this affidavit on Mr. Osborn:

What could the judges have done? What would you have done? Would you have started an investigation? Perhaps exposed this to the public, and it might not have been true, and ruined this man's reputation on a falsehood? Would you have confronted him with it and said, "Look here, what Mr. Vick says about you." Well, you know what he would have done if you had done that. You

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have seen what he did before he learned of the recording. He would have denied it and it would have been a swearing contest between the defendant and Vick.

Now, another reason why did they put the recorder on him. Well, listen: All this has done is seek—listen to the recorded conversation and the defendant admits that this is accurate, this is the recorded conversation which the judges sent out to get. Then Osborn say, "It's a deal. What we will have to do when it gets down to the trial date, when we know the date, tomorrow for example if

*Summations by Government*

the Supreme Court rules against us we will, within a week, we will know when the trial comes. Then he has got to be certain that when he gets on he's got to know that he will just be talking to you and nobody else."

Secret. I can outswear anybody.

And again he says, Mr. Osborn again says in this recorded conversation with Vick, "We'll keep it secret. The way to keep it safe is that nobody knows about it but you and me. Where could they go?"

Is there any reason—is there any other answer but as Judge Miller and Judge Gray told you on the stand, "This was a serious matter. We had to confirm or disprove this."

Ladies and gentlemen of the jury, but for this ???

. . . . .

P. 1096

Now, let's go back just a moment. Mr. Beard didn't report this to the government. Vick reported it to the government and the government did nothing about it for a while because it was incredulous that Osborn would do this. Why didn't Beard report it to the government? He ultimately did. He ultimately did, when the Vick matter was known. He came down to the judges and made a statement voluntarily and was disbarred.

Why didn't he report it when it happened? Isn't the obvious reason that he didn't report it when it happened was because he had no recording? He couldn't prove this. If he had come to the government and said, "Mr. Osborn offered me a bribe," or "offered or sought to get me to bribe a juror, Mr. Osborn would have stood up and said, "Why, certainly, your Honor, I had no discussion like that." And it would have been one man's word against another's—another swearing contest. Isn't that the reason Mr. Beard didn't report this?

Ladies and gentlemen of the jury, I don't propose to

*Summations by Government*

stand up here and carry a brief for this man Vick. But Vick is not convicting Mr. Osborn. Mr. Osborn is being  
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convicted by his own words, out of his own mouth. And I could read this to you, I could go over this recorded conversation where it says, "Tell him it's a deal." "Five thousand now and five thousand when he gets on the jury." "He's got to stay all the way." "No swinging." These are Mr. Osborn's words. You can see it. Take it into the jury room with you and read it. This is what convicts Mr. Osborn, sad as it is, and not Vick.

Now, Mr. Osborn said the reason he told the judges the falsehoods, both of them, he was trying to protect Vick; that he knew all about it. He says when he first came down here the first time he knew all about Vick, and knew what they were going to ask him. He comes down on the 15th and then to protect himself he tells the judges falsehoods, several falsehoods. But he says he knew what they were talking about, but wanted to protect Vick.

Well, ladies and gentlemen, he came back the very next day and wanted to know more details. He came back before Judge Gray with counsel and wanted to know more details, wanted to know what the government had. Now, this is the conversation that was read to you, and in this conversation he is requesting, What has the government got? What is it all about? Does that sound like he was protecting Vick on November 15 when he told the judges falsehoods?  
P. 1098

sation he is requesting, What has the government got? What is it all about? Does that sound like he was protecting Vick on November 15 when he told the judges falsehoods?

Now, then, ladies and gentlemen, he comes down, after he is advised by Judge Gray that there is a recording, he comes down and asks to make a statement to Judge Miller, in a disbarment proceeding, and that has been read to you



*Summations by Government*

before. What does he do when he comes down to the disbarment proceeding? He admits everything that's on the tape, and denies everything else. In other words he admits what is painfully clear from the tape, but he denies any other activities on his part.

He tells the judges, "Oh, but this idea was put in my mind by this man Vick." Well, you have seen Osborn on the stand, you know he is a former prosecutor, a former government attorney, a brilliant, well-educated lawyer. For him to say that Vick led him into this thing, and he is innocent, is like saying a jackass led a fox into a trap.

Entrapment is the inducing by a government agent of

P. 1098

an innocent man to commit an offense, a man that had no idea, no predisposition to commit the offense, overpowering his will, and planting in his mind the idea of an offense and inducing him to do it. This tape recording is highly inconsistent with that.

And then when he comes before Judge Miller on this disbarment proceeding, Judge Miller asked him, "You notice in here, in this recording transcript"—this is Judge Miller—"that after you got back into your office with Vick that the first question asked was by you, and you said, 'How far did you go?' Well, you knew apparently, from that question, that would indicate that you had expected him to contact this juror before; isn't that right?"

And Mr. Osborn said, "Well, your Honor, I have told your Honor about the conversation on the 8th."

And Judge Miller said, "Of course the conversation is here on tape, and it speaks for itself, doesn't it?"

And Mr. Osborn said, "Yes, it does."

And then Judge Miller again said, "And you are telling me that your explanation of this matter is that this is one

P. 1099

*Summations by Government*

single, isolated incident, and nothing similar to it on your part ever happened, either in the Test Fleet case or in this case?"

And Mr. Osborn said, "That is exactly what I am telling your Honor."

And Judge Miller said, "And you are telling me that it is your position that you were more or less sort of led into this by a suggestion coming from Vick?"

And Osborn said, "I was."

And Judge Miller said, "And that is your explanation?"

And Osborn said, "Yes."

Now, ladies and gentlemen of the jury, Mr. Osborn said when he came down before Judge Miller's disbarment proceeding that he made a full, fair, honest statement. And he was asked specifically what I have just read, "Are you telling me that this is the only single, isolated incident, and nothing similar to it on your part ever happened, either in the former Test Fleet case or in this case?" Mr. Osborn said, "That is exactly what I am telling your Honor."

This is in 1963. The Beard matter had happened in connection with the Test Fleet case. And where did Mr. Osborn tell him about the Beard matter? Where in that, in what Mr. Osborn said, was a full, fair statement? Where is the explanation?

**AFTER RECESS**

(Whereupon, the jury was escorted back into the Court Room, and the following proceedings were had in their presence and hearing:)

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**THE CLERK:** Let the Court come to order.

*Summation by Mr. Hooker*

**SUMMATION BY MR. HOOKER**

**MR. HOOKER:** May it please Your Honor.

At the very outset I want to thank you for this sacrifice that you have made this week in the interest of good government, and the interest of justice.

It is a proud position that you occupy, as one of twelve, like the twelve that followed the Master, that you have been chosen to pass upon the rights of the government and of the defendant, Mr. Osborn.

You should have the deep thanks of every member of the communities in which you live, that you have been willing to assume this responsibility, and to accept this duty.

In all of the countries of the world where Communism has taken over and infiltrated, the jury has vanished. There is only one country of the world, only one, not excluding even England, in which we have the free life, the trial by

P. 1172

jury, by a jury of your peers, as an American. And so I salute you as an important cog in a wheel of government in the position which you occupy.

Ladies and gentlemen of the jury, like my friend, Mr. Norman, I, too, have been standing at the bar in court houses for 40 years. This is the saddest day of my professional life. I would give anything on earth if I could run away and not be faced with the responsibility that faces me and faces you.

I wish someone else had had this assignment. This is the saddest, darkest day of my professional career. But there was a sad, dark day before this, and that's the day that Tom Osborn got mixed up with James R. Hoffa. Ever since he came into the courts of the Middle District of Tennessee there has been a trail, a trail of jury fixing.

*Summation by Mr. Hooker*

The idea of a jury in Nashville, three members of a jury in Nashville, having to be excused because an effort was made to fix them.

And, oh, how poisonous, how poisonous this thing has been. How poisonous. How many lives has it crushed? Isn't it a tragic thing? Isn't it a tragic thing that the defendant Osborn didn't heed the warning?

P. 1173

But the first thing we find, and you know there's not a lot of dispute about this, the first thing we find, that he was mixed up in an effort to fix the jury in the Test Fleet case. Do you believe that Harry Beard, who had been in the legislature four or five times, a lawyer at Lebanon, whose good character has been proven by most of the public officials there, would have come down here and been disbarred, and disgraced, his license to practice law taken away from him by these same two stalwart judges that you saw here today—do you believe he would have done that if it had been a lie?

If it was false that Mr. Osborn approached him about David Harrison's wife, do you think he would have come here and been disbarred on that sort of thing? Mr. Osborn wasn't going to tell about it. Mr. Osborn, as I am going to point out to you, had already told a falsehood about it three different times. Beard had no fear that "Mr. Osborn is going to try to turn this on me and going to tell it, and going to tell it that I was trying to get him to give me money to fix Mrs. Harrison." He had no fears of that.

P. 1174

But Harry Beard came here and straightforward, in a straightforward manner, told these judges that an effort had been made to fix David Harrison's wife.

You all know that. Who is the most likely to tell the truth? Whose interest is it? And when Mr. Osborn came



*Summation by Mr. Hooker*

here and appeared before Judge Gray and Judge Miller the first time, November 15, 1963—I am going to point this out more specifically later, but I am referring now to the Beard situation—he was asked if he knew of any efforts to fix the jury, and he said he did not. He was asked if he had discussed it with anybody, and he said no, positively no. At that very moment he knew, if his own statement is true, that Beard had been talking to him about getting some money to fix David Harrison's wife.

And then when he came down here that afternoon with his lawyer, all old friends of mine, Mr. Norman, Mr. Denney, and Mr. Lansden, he never opened his mouth about Beard. You know I would have a whole lot more credence in his story if he had told on those two occasions, and especially on the final occasion that I am moving up to, P. 1175

if he had told at that time, "Oh, yes, I know something about somebody wanting to meddle with this jury. I am not going to hold it on my conscience. I am a lawyer, and an officer of the court. And this man Beard has been to see me to try to get me to corruptly give him some money to fix the jury."

Isn't that what honesty required?

Suppose you hadn't been locked up in this case and somebody had been to see you to see if they could fix you, would you have told it or not? Of course you would.

You would have been guilty of a felony if you hadn't.

But more important than that, you would have been guilty of a lack of integrity.

And then to come back down here on a later date, and Judge Miller set up this disbarment hearing, at Mr. Osborn's request, told him he could have any lawyers he wanted. He said he didn't want any. He told him he could cross-examine Vick. He said he didn't want to cross-

*Summation by Mr. Hooker*

examine Vick. He said he could have any character witnesses to come speak for him if he wanted. No, he didn't want that.

P. 1176

And he never mentioned one single solitary word about Harry Beard.

Judge Miller asked him every conceivable way, "What do you know about anybody trying to fix a jury?"

And you know all he ever told in that hearing. You have heard it all now, you know. The only thing that the defendant ever told in that hearing was what was on that tape. What was in his own voice.

And I am not surprised at my distinguished friend, one of the greatest trial lawyers the South has ever produced, spoke here to you for an hour and 45 minutes, and never mentioned a single solitary word that Tom Osborn had said on that tape. And I am asking you, I am asking you on the first count, don't you convict him on the testimony of Vick. Vick might as well have been a mechanical man. The tape recorder, the statements before the Judge, wouldn't have been admissible in evidence if we hadn't offered Vick. Vick was necessary and essential to develop the tape, what the tape said that was on his back.

I'm not asking you to convict on the testimony of Vick.

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I'm asking you to convict the defendant, if you find him guilty beyond a reasonable doubt, on his own voice. And I pledge you with all my heart, with all of my heart, that I wish it wasn't my responsibility to ask you to do it.

Oh, you know as I look around this great room, this is a sacred place for me. This is a type of place in which I have lived a good part of my life. This is the place where justice is done. I wouldn't want to live in any community

*Summation by Mr. Hooker*

that didn't have a church. And I wouldn't want to live in any community that didn't have a court house. A court house presided over by such men as Judge Miller and Judge Gray, Judge Boyd.

I want to tell you, ladies and gentlemen, you may not realize it, you may not realize it, but if it wasn't for this court house, you might as well go home and burn your houses down. No life, no property would be safe, in this land in which we live, without the court house. You would be better to go back to the jungle, where you could at least run and hide, crawl in a cave to protect yourself. As long as you have city streets, town streets, country highways,  
P. 1178

where people move about, you've got to have a seat of justice where justice is done.

Do you think it was pleasant for Judge Miller and Judge Gray to come here this morning and tell you what they did? I can tell you it wasn't.

And when you go out into the jury room to consider your verdict this afternoon and tonight, what you are going to have to do is not going to be pleasant, any more pleasant than what I am doing right now.

Which side are you going to stand on? We are in the test. The courts of Tennessee are in the test. The courts of Tennessee stand at the bar of justice. Are we going to have integrity? Are we going to have our juries protected? Are we going to have a corruption of the very stream of justice? That's your problem.

And while I wish, as I have said before, with all of my heart that this was not my responsibility and my duty today, I prefer to stand side by side with Judges Miller and Gray for justice and right, in America.

What are you going to do about Harry Beard? What  
P. 1179

*Summation by Mr. Hooker*

are you going to do about that second count? Let me tell you something. Let me tell you something.

You're never going to catch anybody fixing a jury with an elder or a deacon or a steward in the church, or some substantial citizen that just walked out from the altar. That ain't the way you go about it.

They had some character witnesses here, I didn't think anything like the substantial people that we offered on the other side, to say that they wouldn't believe Beard on oath. Who are you going to believe? Beard that came forward and told about it and got himself disbarred, or Mr. Osborn, who in effect denied it three times? It's up to you. It's up to you.

The criticism was made that Judge eGray and Judge Miller's testimony was not offered until the end of the case. You heard that objection made to His Honor, Judge Boyd, and he held it to be proper proof in rebuttal. There are certain things that you can prove in the case in chief and others that you have to wait to prove until after the defendant has testified. They were offered to show that there was no entrapment in that case.

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You know for there to be an entrapment, there must be an effort made by the government to get somebody to violate the law, to encourage them to violate the law, and them have watches and so on, recordings, or something, and catch them in the act, when you have encouraged them to do the very thing they did. The government didn't do that in this case. The government took no steps at all to prove the truth or the falsity of this situation until these judges were confronted with this affidavit of Vick, and then it was the ysaid, "This is too serious. We have got to find out whether this is so or not."



*Summation by Mr. Hooker*

And that's not entrapment. And furthermore, his Honor is going to tell you, I am sure, that if you find that he had this conversation with Beard, and that he was guilty of that offense, he can't rely on the defense of entrapment, having already gotten into this thing and committed one overt act, one violation of the statute.

And also, too, and I am sure His Honor will so tell you, under the language of that statute that makes it unlawful for me to even extend my hand toward you in a manner of

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corruption with you on this jury, that success is not necessary. It doesn't make any difference that Vick didn't see Elliott. It doesn't make any difference that Elliott was not actually corrupted.

“Anyone by any threatenings, letter, or communication, influences, obstructs, or impede or endeavors to influence, obstruct or impede the due administration of justice shall be guilty of an offense.”

Don't you see that has to be the law? If that wasn't the law, people could go about undertaking to fix juries, and those that they couldn't fix, if they told it, they would say, “Well, I am not guilty, because I didn't succeed. I tried to buy this fellow, but he wouldn't accept the money. He wouldn't stay put.” And of course, those that you did succeed in and fix, they're never going to tell it. They are going to be fixed and hang the jury anyhow, so you could never get a conviction. And so the law is, if you make a move in that direction, if you extend your hand in that direction, if you make a suggestion in that direction, if you tamper in any manner with the sacred process of jus-

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tice, you are answerable to the law.

*Summation by Mr. Hooker*

Oh, you know my friend, Mr. Norman, and I have referred to him several times as my friend, because I count him as such — we have been at the bar about the same length of time. We have been in a lot of cases together, and a lot against each other, down through the years, and he took you away back, he said, to the beginning of this thing, that Vick started to talking to the FBI. The FBI said to him that all they were interested in was him reporting illegal acts, that that is where it started.

I will tell you where it started. It started when Tommy Osborn hired him. Who got him in this business of examining and inspecting jurors and reporting on them? Who got him into this job of going around finding out about people's race and religion and union connections, and all that to try to save James R. Hoffa from conviction? It wasn't the United States Government. It was Z. T. Osborn.

And I say to you again that Vick might as well just have been a mechanical man. I don't care how much they degrade him, jump up and down and stomp on him. They can't erase the record.

\* \* \* \* \*

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You know, there's one right tragic thing about this business, about this recording of Vick's. All the events that happened, you can't get away from it — can't get away from it — it started in the beginning this way, and it looks like it's going to end this way. Everywhere you turn where there's something involving a jury, or involving a witness, you find a Teamster there.

I am not attacking any working man's right to belong to a union. They have got a right to belong to it. But I want to say, though, to you, that it is passing strange when they come forward with all of this recording in Indianapolis, and Louisville, and Nashville, that the men who are doing

*Summation by Mr. Hooker*

it are Teamsters, and a man named Spindel who was doing the same thing for Hoffa in Chattanooga.

Ah, ah, that's the black day. I wouldn't have to be here today with my heart literally on my sleeve, I wouldn't have to be here today with lawyers, the best friends I have got in the world, testifying as to the defendant's good character, and with a good friend as defense attorney on P. 1189

the other side, if Z. T. Osborn had never gotten mixed up with James R. Hoffa.

What are the courts supposed to do about it? What are these judges supposed to do about it? What am I supposed to do about it as a lawyer designated by the Department of Justice? Not to try this case. This happened long after I was employed as a special assistant to the Attorney General of the United States. I would never have accepted the trial of this case alone, and I didn't want to do it anyhow, and don't want to do it now. I've rolled and tossed at night ever since this has been going on, wondering if there wasn't some way that I could be spared this.

What are we going to do with our courts? Do you want to close the courts? What are we going to do with all this system of government where a man has a right to be tried by honest jurors in their case? Are we to cast it aside like, to use Mr. Norman's expression, an old hat, or an old cloak? What are you going to do about it?

Of all the sorrow I have had about this, I hate to pass it on to you, but shortly I have got to take this garment off and hand it to you. Will you have the courage, will you have the fortitude, will you have the interest in justice to P. 1190

stand on the side of justice, to stand on the side of the courts, the judges?

*Summation by Mr. Hooker*

I believe you will stand on the side of the law. I know you will. I know you will. We took you because we thought you were that kind of citizen, that you could measure up to this responsibility, probably the worst one of this character that you have ever faced in your life. You're not going to want to do it.

I hope you won't regard me as irreverent when I say — and I commend it to you — that I have gotten down on my knees at night like this, and asked God that justice, and only justice, be done in this case.

My only desire is — my only desire is that you weigh the evidence justly and fairly, that you listen to the charge of his Honor, and do what you think your duty is. I'm trying so hard to do mine.

Bear with me just briefly.

Mr. Osborn came down here and met with Judge Miller and Judge Gray in this courthouse. You know, there's a fine relationship that exists between lawyers and judges. All lawyers that I know that are worthy of the name have respect for the men who wear the robes; and all the judges

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that I know that have the right to wear the robe have respect for the robe. I want to say to you, with all the sincerity at my command, that I have been practicing law 40 years, and I have never yet appeared before a dishonest judge. And I hope before I ever do I will rest in my grave.

Now, I have appeared before a few that I didn't think knew much facts or any law to speak of, but never a one that wasn't worthy of high praise in the matter of integrity and honor.

Of course what I said otherwise was purely facetious.

So he came down here to appear before these two fine judges. There are not two finer anywhere in the country.



*Summation by Mr. Hooker*

I think you can ask any lawyer in Tennessee and they will give you the same answer.

Judge Miller said, "I have this further question." This is the first meeting. "Do you have any information concerning any plan or effort to tamper with this jury, or concerning any acts which have taken place for such purpose?"

Now, mind you what I am reading from is not the same thing that I cross-examined him about. This is the daily  
P. 1192

transcript of the evidence. You know these fine reporters take this down here every day, and they write it at night and the next morning they deliver us a copy of every transcript, and this is Volume IV, this is the fourth day, May 28, and this is the cross-examination of Mr. Osborn.

"And your answer, 'I do not, no, sir.'"

And then Mr. Osborn answered, "Yes, sir," meaning that he had said that.

"And that was untrue?"

"Answer: It was untrue."

My friend Mr. Norman didn't mention that, not a single time.

If the facts are like they say now, why didn't he tell them about Vick, and say, "This man has entrapped me"? Why didn't he tell them about Beard, and say, "This man has tried to get me to corruptly pay him some money. I have been called up on the carpet about it, and I am going to tell the truth. My law license is at stake, my liberty is at stake, my family is at stake."

You know what he said about this? I will come to it later, but I just want to tell you now. He said he was not even tempted to tell about Vick, this man who he now says entrapped him. The idea, of entrapping a fine lawyer with

*Summation by Mr. Hooker*

20 years experience, a former assistant United States Attorney, a former assistant City Attorney, a man who has tried cases in all the courts, including the Supreme Court of the United States, that some fellow like Vick entrapped him into a jury fixing proposition.

And then he came forward and said, "What I said was untrue, because I wanted to protect Vick."

Do you believe that? If you do, acquit him.

I asked him, "Then in other words the reason you did not tell Judge Miller and Judge Gray the facts and the truth was in order to protect this man who you now say deliberately set out to entrap you and get you in this difficulty?"

"Answer: That was the purpose in my mind. That was what put me in that position."

Telling an untruth to the two United States District Court judges — a member of the bar for 20 years — to protect this man Vick who now he says is a despicable creature.

"Well, with all of this searching examination of you that Judge Miller conducted on the disbarment proceeding, did you ever tell anything about the Harry Beard incident?"

P. 1194,

"Answer: I was never asked about the Harry Beard incident, and the Harry Beard incident wasn't mentioned."

Why, he was asked repeatedly at all three of these hearings, "What do you know about jury fixing?"

It's all here, and I'm not going to read it all, I am just doing this for the purpose of reminding you about some of the highlights.

Judge Miller said this to him: "Well, I think we should go this far at this time, Tommy, and tell you that, as we have already pointed out, this evidence is substantial, and

*Summation by Mr. Hooker*

it indicates that an improper attempt has been made on your part to contact and improperly influence a juror by the name of Elliott.

"Yes, sir, he asked me that."

And then I asked him:

"And then you said, 'Well, it is—As I say, I do not—What I wanted is some idea as to the source. Now—'"

"Judge Miller said: 'Well, if you—'"

"And you interrupted, 'It is—'"

"Then Judge Miller says, 'If you have had no discussions whatsoever or conversations in this regard, which

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is what you have stated—

"Mr. Osborn: Well, I have not had any conversation or any discussion with anyone as to any effort to contact Elliott or any other person on the jury."

That's what he said first.

"Judge Miller said: 'Did you listen to the tape with me just a moment ago which purported to be a recording of a conversation between you and Vick on November 11?'"

"I did."

"Answer: Yes, that took place, midway in the hearing.

"Question: Yes, sir. And that is the same tape these ladies and gentlemen of the jury listened to with the ear-phones?"

"Answer: Yes, sir.

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"Question: And Judge Miller said, 'Did you follow that with the transcript?' and you said, 'Yes, I did.'"

"In other words, you took the transcript, like the people there—like were passed to each member of the jury, and as you listened, then you followed with what they had written down?"

*Summation by Mr. Hooker*

"Answer: Yes, sir.

"Question: Then I believe Judge Miller says: 'Which I believe is marked in this proceeding as Exhibit D?'

"You said, 'Yes, your Honor.'

"Judge Miller says: 'And could you detect and make out the substance of this transcript from that recording?'

"And you answered, 'Yes.'

"Judge Miller said, 'And you would say then from having listened to the tape that this is a substantially correct reproduction of what took place?'"

And Mr. Osborn answered, Yes, sir.

"Question: And you said: 'It is substantially correct. There are things that I could—yes.'

"You said that, didn't you?

"Answer: Yes, there are some things in the transcript—these are immaterial things, but in one place I think they have got my voice beside something Vick says, and so on. But in sum and substance it is a correct transcript."

Now, my distinguished friend, the great lawyer that he is, he would just have you forget that.

Are you going to be able to say, and live with your own conscience, that a man that would say what he did on that tape recording, that each of us listened to, is not guilty under the statute?

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I don't care how many witnesses they bring who swear they wouldn't believe Vick. I don't care how many portraits of Judas Iscariot he looks like.

If you know where Jack really got that, that's what Jim Reeves said about Mr. Volstead, when Reeves was so much anti prohibition, he said Volstead looked like all twelve pictures of Judas Iscariot.

I don't care what he looks like. I am not asking you to convict him on his testimony. I am asking you to convict him on his own voice.



*Summation by Mr. Hooker*

If you don't believe he said this, if you don't believe the intention was to fix a juror, turn him loose, and announce by your verdict that jury tampering can run rampant in the Middle District of Tennessee.

Then I asked him, "Then Vick said: That is right, and I am going to play it slow and easy, myself. Anyway we talked about something, about \$5,000 now, five thousand later, see, so he did, he brought up five thousand, see, and talking about how they paid it off, you know, things like that. And I don't know whether he suspected why I was there or not, because I don't just drop by out of the blue

P. 1198

to visit him socially, you know. We are friends, close kin cousins, but we don't fraternize, you know. So he seemed very receptive." I don't know what that word is. It looks like I can't make out your opinion.

"... out to hang the thing for five now, and five later.

"Now I thought I was to report back to you and see what you say."

Then Mr. Osborn's answer, in his own voice, on the recording, "That's fine. That's fine.

"The thing to do is to set it up for an appointment later so you won't be running back and forth."

You know there's no proof on this. I've got none. I've never talked to Elliott. I don't know whether he was offered the \$5,000 or not. It don't make any difference. Not an integral part of the offense, as His Honor is going to tell you, that success is not necessary, and reaching the hand toward the result is what makes the offense.

"That's fine. The thing to do is set it up for an appointment later so you won't be running back and forth."

P. 1199

"Now is that all a part of this entrapment that you gave, got you into?

*Summation by Mr. Hooker*

**"Mr. Osborn: Yes, sir.**

**"And set it up for appointment later?"**

**"Yes, sir. This is the culmination and the end of entrapment."**

Then the next statement made on the bottom of page 400, then **"Tell him it's a deal. What do you mean by that, Mr. Osborn?"**

**"Answer: To tell him it was a deal.**

**"You mean to tell him that the deal was all fixed, five thousand dollars when you got on the jury, \$5,000 when you hang it. Was that the deal?"**

**"Mr. Osborn: That's the deal."**

**What about it?**

**What about it?**

**That's not Vick. That's the voice of the defendant himself.**

**"It's a deal. That's the deal. Five thousand now and five more then."**

**"And Vick said: Strictly social?"**

**"And you said, 'Oh, yes,' and Vick said, 'I have got my story all fixed on it. And then you said: He will have to know where to come.'"**

**"What did you mean by that?"**

**"Mr. Osborn said: He will have to know where to come.**

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**"What did you mean by that?"**

**"Answer: Just what it says there.**

**"Question: Well, he would know where to come to the court house to be on the jury."**

**"What did you mean? Where to come to get the money?"**

**"Answer: Certainly. That's what I'm saying."**

**"Where to come to get the money."**

*Summation by Mr. Hooker*

"In other words, when you got to the place where he was to get the money, and when he was to get the money, Vick was the man who was to handle the \$5,000?"

"Answer: Yes.

"Then I asked him, Vick said: All right. You want to know when he's ready, when I think he's ready for the \$5,000, is that right?"

"And you said: Well, no, when he gets on the panel, once he gets on the jury, provided he gets on the panel.

"He wanted to be sure not to buy him unless he was going to be on that jury. Wanted to be certain he was on the panel.

"In other words you wanted to be sure that there was

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no mistake about it, that as a prerequisite to getting the first \$5,000, he had to first get on the jury.

"Mr. Osborn: Yes, sir.

"Now, you understand I am in my mind doing this, I am making certain Vick understands no date is set and no one knows yet when the trial date will be set. No one knows when or who will be on the jury and he's not going to do something until further agreement is made."

Then Mr. Osborn said on this recording, "All right, so we will have to leave it to you. The only thing to do would be to tell him, in other words your next contact with him would be tell him that if he wants the deal he's got it."

"Now you meant by that, you meant Elliott?"

"Answer"—his answer before you here was: "Yes."

"And you said the only thing that it depends on is him being accepted on the jury, if the government challenges him, there will be no deal.

"That's what Osborn said on that recording, isn't that correct? Have you read it?"

*Summation by Mr. Hooker*

"Answer: Yes. It's in the transcript, and you said, "All  
P. 1202

right. If he is seated.

"And you said: If he is seated and Vick said: He can expect \$5,000 then," and you interrupted and said "Immediately."

"You meant by that—

"He answered: Immediately. He meant immediately. As soon as he gets seated, he gets the first \$5,000.

"Who was going to put it up, the \$5,000, Mr. Osborn?

"There wasn't anybody going to put it up."

Well, I don't blame him for not wanting to tell it, but I have got a good idea who was going to put it up, haven't you?

It would likely have been somebody that had an interest in the case, wouldn't it? Nobody else was going around buying jurors, you know, that hasn't got any interest in the case.

Ladies and gentlemen of the jury, I have detained you longer than I had intended to. Longer than I had intended to. I want to express to you again my appreciation as a citizen of the United States, of this responsibility that you have held up your right hand and sworn.

That was said by Judge Miller this morning, the most  
P. 1203

serious thing that has ever confronted the courts of this section, to my knowledge, in my lifetime. This goes to the very seat of justice, to the very stream of justice. This goes to the question of whether law and order and decency will be maintained in this country. This goes to the question of whether the courts will stand or fall, whether the jury system established by our forefathers in the Constitution of the United States is a success or failure.



*Summation by Mr. Hooker*

What if we should do away with the jury system like the communists have, and have umpires, not even lawyers, to try people and send them to the gallows?

Whether we should have a system of government where the butt end of a rifle is bumped on the door and a man taken out and shot at sunrise by a firing squad.

Whether the jury system can survive. Can it survive? Can it stand the test? You are the ones to make the answer. There's not a man or woman within the sound of my voice that has any more sympathy for the defendant than I have. I would make a contribution to the full extent of my means, if he hadn't done it. Or if when he had done it, he had

P. 1204

come forward and said: "Yes, Judge, Yes, Judges, I was misguided. I was interested in my client. I wanted to win this case so bad I made a mistake. Please forgive me. I know not what I did."

Did he do that? If he had of done that, every lawyer at the Nashville bar, including me, would have been standing by his side, begging that he be treated leniently, begging that he be shown mercy.

I didn't hear him say he was sorry in this trial, really.

So it is yours. I will pass it to you.

Now, after His Honor concludes, remarks—all the actors in this play will disappear, disappear. And you will go back to your room and there you will meet firsthand this grave responsibility. There in the quietness of your deliberations, in the sight of your God, you will have to decide which side you are going to stand on.

You are going to have to let it be known which side you stand on.

*Charge to Jury*

I have confidence in your honor and integrity. And as one American citizen to another, I leave this responsibility in your hands.

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**CHARGE TO JURY**

**THE COURT:** Ladies and gentlemen, the Court proposes to give you a reasonably brief charge at this time, but I suggest that it might help a little bit if you will stand and take a seventh inning stretch. It will help you a little bit, I am sure.

(Jurors stand)

**THE COURT:** Ladies and gentlemen of the jury, the indictment in this case, which, as you understand, the Court feels sure, is a means only by which the defendant, Z. T. Osborn, is brought before this Court and this jury for trial and in no sense evidence against the defendant, charges the defendant, Z. T. Osborn, in three counts with the offense of obstructing justice. The third count of the indictment, as you understand, has been dismissed by Government counsel and you need not, of course, concern yourselves further with this particular count.

The law makes it the duty of the Court to give in its charge to the jury the applicable law of the case, and the duty of you jurors to carefully weigh and consider all of the evidence adduced and apply it to the law as given you by the Court in making up your verdict or verdicts. You jurors are the sole judges of the evidence, and also the judges of the law as applies to the evidence in the case,

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but cannot disregard the law as given you by the Court.

The jury in considering the case should entertain no sympathy or prejudice, or permit anything but the law and

*Charge to Jury*

the evidence to influence it in determining its verdict or verdicts. You should render a verdict or verdicts with absolute fairness and impartiality as you think truth and justice dictate. Every fact and circumstance in the case you may consider in arriving at your verdict or verdicts.

The Court will now explain to you the law as applicable to the charges in this indictment.

First, I shall read to you the statute on which each count of the indictment is based, the first statute as follows:

“Whoever corruptly, or by threats or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any witness, in any court of the United States or before any grand or petit juror, or officer in or of any court of the United States, or officer who may be serving at any examination or other

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proceeding before any United States commissioner or other committing magistrate, in the discharge of his duty, or injures any party or witness in his person or property on account of his attending or having attended such court or examination before such officer, commissioner, or other committing magistrate, or on account of his testifying or having testified to any matter pending therein, or injures any such grand or petit juror in his person or property on account of any verdict or indictment assented to by him, or on account of his being or having been such juror, or injures any such officer, commissioner, or other committing magistrate in his person or property on account of the performance of his official duties, or corruptly, or by threats or force, or by any threatening letter or communication, influences, obstructs, or impedes, or endeavors to influence, obstruct or impede, the due administration of justice, shall be

**Charge to Jury**

fined not more than \$5,000.00 or imprisoned not more than five years, or both."

Ladies and gentlemen of the jury, the Court has read to you the entire statute upon which the charges in this indictment are based. To summarize for your benefit, the

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pertinent parts of the statute for our purpose, you understand, provide punishment for any person who knowingly, that is, intentionally and corruptly, that is, with a bad purpose, endeavors to influence or impede any petit juror in the discharge of his duty or corruptly endeavors to influence, obstruct or impede the due administration of justice.

Simply stated, this statute on which the separate counts of the indictment in this case are based is, you understand, designed to protect, among others, jurors serving in the Federal Courts and also to prevent miscarriages of justice by corrupt methods.

Now, in order for you to find the defendant guilty on either count of this indictment, members of the jury, the Government must prove beyond a reasonable doubt each and all of the following facts:

One. With respect to Count One: That there was pending in the United States District Court for the Middle District of Tennessee, Nashville Division, the case of United States versus James R. Hoffa, et al, Criminal number 13,384; that Ralph A. Elliott was a prospective juror in this case, and that the defendant endeavored to influence, obstruct or impede said Ralph A. Elliott in the discharge

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of his duty;

Two. With respect to Count Two: That there was a trial going on in the United States District Court for the



*Charge to Jury*

Middle District of Tennessee, Nashville Division, namely, United States versus James R. Hoffa and Commercial Carriers, Inc., Criminal number 13,241; that Mrs. D. M. Harrison was serving as a juror in this case and that the defendant endeavored to influence, obstruct or impede said Mrs. D. M. Harrison in the discharge of her duty.

With respect to both counts:

Three. That the defendant acted corruptly, or, as I say, as I shall hereinafter define that word for you, with an improper motive or for an improper purpose.

Ladies and gentlemen, the evidence offered by the Government, it might be stated here, that there was pending in the United States District Court for the Middle District of Tennessee, Nashville Division, on July 29, 1963, the case of United States versus James R. Hoffa, et al, Criminal number 13,383; that James R. Hoffa was a defendant in that case and that the defendant here, Z. T. Osborn, Jr., was attorney of record for Hoffa in that case, is uncontradicted.

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The evidence offered by the Government that a petit jury panel was selected in that case and that Ralph A. Elliott was a member of that panel is also uncontradicted.

The evidence offered by the Government that there was a criminal trial pending in the United States District Court for the Middle District of Tennessee, Nashville Division, from October 22, 1962, until December 23, 1962, that the trial was styled United States versus James R. Hoffa and Commercial Carriers, Inc., Criminal number 13,241, that James R. Hoffa was the only defendant in that trial, and that defendant Z. T. Osborn, Jr., was attorney of record for Hoffa in that case, is uncontradicted.

The evidence offered by the Government that a jury of twelve regular jurors and four alternates was impaneled

*Charge to Jury*

in that case, and that Mrs. D. M. Harrison of Lebanon, Tennessee, was one of the twelve regular jurors, is also uncontradicted.

The word "corrupt," I might say, is capable of several meanings in different connections, but, as used in the statute herein, any endeavor to impede or obstruct the due administration of justice in the matters under investigation would be corrupt.

"Corrupt" may carry with it the idea of improper motive in the commission of a particular act. Such improper motive in the commission of a particular act. Such improper motive may be inspired by a desire or hope of benefit or reward.

It is an offense under the within statute, members of the jury, to endeavor corruptly to influence a prospective juror by requesting, counseling, or causing another to contact a prospective juror, directly or indirectly, for the purpose of inducing the latter to vote for an acquittal or to influence his decision on the merits of a given case, in the event of his selection as a juror. This by its very nature would be an improper motive, and if it is with the purpose that one so act, an improper motive is established.

The administration of justice, it should be pointed out, means performance of acts required by law in the discharge of a duty.

Members of the jury, the statute herein proscribing corrupt endeavor to influence, obstruct or impede the administration of justice was enacted, as the Court has said, for the purpose of safeguarding the administration of justice, and it matters not that the endeavor was not effective or

P. 1213

successfully carried out.

*Charge to Jury*

Success or failure of the endeavor to obstruct justice, in other words, is immaterial to the question of guilt of the offense of endeavoring to obstruct justice.

For your clear understanding, under this statute which forbids the corrupt or unlawful endeavor to influence a juror in obstructing or impeding the due administration of justice, success of the venture is not the criterion, although it may aggravate the offense. The statute, as you understand, condemns any effort, that is, any overt, manifest or perceivable act, to assay or do or accomplish the evil purpose which the statute was enacted to punish.

In this connection, with respect to Count Two, the Court instructs you that an approach to corrupt a juror through members of one's family constitutes an unlawful endeavor within the meaning of the law, notwithstanding the fact that such an approach was entirely unsuccessful. As you will observe, County Two charges the defendant with an endeavor to influence, obstruct and impede a juror by requesting an intermediary to contact a member of the juror's family, that is, that the defendant requested Harry

P. 1214

Beard to make an unlawful offer to D. M. Harrison, the husband of the juror.

No one is authorized to communicate with jurors other than in open court regarding a case in which they are serving, and any endeavor to accomplish this objective, if done with a corrupt purpose or intent, constitutes a violation of the statute herein.

Consequently, if you find beyond a reasonable doubt that this aforementioned approach did occur as alleged in this count and that the defendant participated in it with the purpose of influencing the said juror, you could find the defendant guilty on Count Two, even if you find that the matter was never mentioned or discussed by the inter-

*Charge to Jury*

mediary Beard with Mr. Harrison and by Mr. Harrison with the juror Mrs. Harrison herself.

Ladies and gentlemen of the jury, the defendant has interposed for your consideration the defense of unlawful entrapment, particularly as it relates to the first count of the indictment in this case. To maintain his position that he was entrapped into an endeavor to obstruct justice, the entrapment must, you understand, be unlawful. Unlawful entrapment means that the idea of committing the crime originated with the law enforcement officers, the Department.

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ment of Justice in this case, or its agent, Robert Vick, rather than with the defendant, that the defendant had no previous disposition to violate the law, and that agent Vick urged and induced him to commit the crime charged. This defense is based on the policy of the law not to ensnare or entrap innocent persons into the commission of a crime.

The Court instructs you that unlawful entrapment is not established if the defendant was either engaged in similar crimes, or was ready and willing to violate the law, and the law enforcement officers or their agents merely afforded him the opportunity of committing the crime. Under these circumstances, entrapment is lawful rather than unlawful, even though the law officer or other officers may have used a ruse or otherwise concealed their identity.

Ladies and gentlemen of the jury, the Court has stated to you the rule concerning entrapment. With respect to the first count of the indictment, it has been, as you know, contended by the defendant Osborn throughout the trial that he was the victim of an unlawful entrapment by the Justice Department and its agent, Mr. Vick, in the procurement of the tape recording in the defendant's office on

P. 1216



*Charge to Jury*

November 11, 1963, as well as other evidence in that connection which has been presented in the trial, and that the defendant was, therefore, entrapped within the meaning of that legal term as defined for you by the Court, and that because of such unlawful entrapment the evidence aforesaid under the first count is not valid, and because of the unlawful nature of same, Count One should not be permitted to stand and the defendant, therefore, should prevail at your hands with respect to that particular count of the indictment.

If you find in accordance with the defendant's contention aforesaid, and, incidentally, the burden is upon the Government to prove beyond a reasonable doubt the evidence aforesaid was not procured through unlawful entrapment, than you will find for the defendant on this particular count of the indictment and return a not guilty verdict on Count One.

If, on the other hand, you find on the facts and circumstances of this case and on the instructions as here given you by the Court that the evidence aforesaid, including the tape recording, was obtained by lawful means, that is, that there was no unlawful entrapment, you will find this particular issue against the defendant and your verdict on P. 1217

Count One would be for the Government.

Now, the Court has instructed you on entrapment with respect to the first count of the indictment. You will note from the indictment that the facts concerning Count Two were alleged to have occurred almost a year prior to the allegations in Count One. That is, the defendant is charged with having made an effort to corrupt justice by the use of Harry Beard in 1962 and with having made an effort to obstruct justice in 1963 through Robert Vick. You are instructed that an existing disposition to commit a similar

*Charge to Jury*

offense is an important factor to consider in determining whether there was a subsequent entrapment. What the Court is saying as applies to this case is that if you find beyond a reasonable doubt with respect to Count Two that the defendant Osborn made an effort to corruptly influence juror Mrs. Harrison during the 1962 Hoffa trial through Harry Beard, and beyond a reasonable doubt that a predisposition to commit a similar act existed at the very time the defendant employed Vick, you may consider this as evidence that he may not have been illegally entrapped into the commission of the offense of endeavoring to influence prospective juror Ralph Elliott through Robert Vick in 1963.

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The Court instructs you that whoever directly commits any act constituting an offense defined in any statute of the United States, or knowingly in some way aids, abets, counsels, commands, induces or procures its commission is a principal and punishable as such. Also, one who causes an act to be done, which, if directly performed by him, would be an offense against the United States, is a principal and punishable as such.

Members of the jury, it is the Government's contention that trial was in progress in the United States District Court for the Middle District of Tennessee in Nashville in October, November and December of 1962; that the defendant in that case, James R. Hoffa, was represented by the defendant here, Z. T. Osborn, Jr. It is the Government's contention that Mrs. D. M. Harrison of Lebanon, Tennessee, was one of the jurors in that Hoffa trial. It is further the Government's contention that Robert Vick was hired in October of 1962 by the defendant Osborn to investigate the jurors who might sit in the Hoffa trial and that during the course of investigation at Osborn's direc-

*Charge to Jury*

tion he contacted Harry Beard, a lawyer of Lebanon, to secure background information on the prospective jurors.

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It is further the Government's contention that in late November or early December, 1962, Vick and one Fred Ramsey went to Lebanon, Tennessee, and had a conversation with Harry Beard during which they suggested that Beard see the defendant Osborn. During the next few days and while the Hoffa trial was in progress, Harry Beard came to defendant Osborn's office in Nashville. During the first conversation at Osborn's office, Osborn asked Beard to talk to D. M. Harrison, the husband of juror Harrison, and offer him ten thousand dollars if he could get his wife to vote for the acquittal of James R. Hoffa. During subsequent conversations between Beard and Osborn at Osborn's office here in Nashville, and still during the course of the Hoffa trial, Beard, in an effort to get out of the deal, told Osborn that Harrison wanted fifty thousand dollars. Thereafter, Osborn checked with Hoffa and Hoffa would not pay that high.

This is the Government's contention with respect to the second count of the indictment, you understand.

With respect to the first count of the indictment, it is the Government's contention that in November of 1963 Robert Vick, who was still working for Osborn as an investigator, had conversation with Osborn during which he

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told Osborn that he had a cousin on the jury panel expected to try the Hoffa case in which Hoffa and six others were charged with jury tampering in the 1962 Hoffa trial. Upon being told that by Robert Vick, Osborn told Vick to go see Elliott, sit down with him, talk with him and get him on our side. Vick had previously been asked by Mr. Walter

*Charge to Jury*

Sheridan of the Department of Justice to report to him any information he might receive of illegal activities of the defendants or their counsel and specifically to report only such illegal activities.

The Government further contends that when Osborn on November 7, 1963, asked Vick to contact his cousin Elliott, sit down and talk with him and get him on our side, he reported this conversation to Mr. Sheridan of the Department of Justice, and on the next day signed an affidavit containing the substance of the conversation.

The Government further contends that it reported this information to the Federal Judges of this District, Judge Miller and Judge Gray, as the Government had an obligation to do, and these judges authorized the Government to send Robert Vick back in to talk to Mr. Osborn with a recorder on to prove or disprove the proposed approach to prospective juror Elliott. The Government further con-

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tends that on each occasion when Vick was equipped with the recorder, this was done with the specific approval of the Federal Judges of this District. Thereafter Robert Vick on November 11, 1963, and pursuant to the specific authorization of the Federal Judges, had a conversation with the defendant Osborn in which the proposed bribe to prospective juror Elliott was discussed.

If, after a careful consideration of the evidence in the case and the instructions as here given you by the Court, you find beyond a reasonable doubt and to a moral certainty the defendant guilty under either of the two counts of the indictment herein, as contended by the Government, you will convict the defendant and report to the Court guilty verdicts accordingly.



*Charge to Jury*

The defendant, on the other hand, denies his guilt of the matters charged in the indictment herein and each count thereof. He has entered a formal plea of not guilty.

With respect to the charges in the first count of the indictment, he denies that he knowingly, willfully and corruptly endeavor to influence, obstruct or impede the due administration of justice in the particulars charged, and contends with respect to that count that if the statements  
P. 1222

ascribed to him on the tape recording, among others, are found by you to be true, that he was a victim of unlawful entrapment at the hands of the Department of Justice, in that the original idea that Robert Vick would contact juror Elliott and offer him ten thousand dollars to induce the said Elliott to vote for an acquittal in the then pending Hoffa case originated with the Department of Justice and its agent Vick, rather than with the defendant, and that there was no previous disposition on the part of the defendant to violate the law, and that it was through the urging and inducement of the Department of Justice and the said Vick to ensnare and entrap the defendant unlawfully that he directed the latter to make a ten thousand dollar payment to the said Elliott.

He specifically denies that he, as charged in the second count of the indictment, knowingly, willfully and corruptly endeavored to influence Mrs. Harrison to obstruct or impede the due administration of justice in this District Court presided over by Judge Miller in the criminal case then on trial against James R. Hoffa and Commercial Carriers, Inc., through a request and direction that Harry Beard contact D. M. Harrison, the husband of a juror sitting in the trial of the aforesaid case, to offer the said Harrison  
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*Charge to Jury*

ten thousand dollars to induce his said wife to vote for an acquittal of the aforesaid Hoffa.

If, after a careful consideration of the evidence in the case and the instructions here given you by the Court, you find in accordance with the contentions of the defendant, or entertain a reasonable doubt concerning same, or find the Government has not proved its case as to both counts of the indictment beyond a reasonable doubt and to a moral certainty, or have a reasonable doubt concerning this, you will, in either of these events, find for the defendant and report verdicts to the Court of not guilty.

You enter upon this investigation with a presumption that the defendant is not guilty of any crime, and this presumption stands as a witness for him until it is rebutted and overturned by the Government by competent and credible proof. It is, therefore, incumbent upon the Government, before you can convict the defendant, to establish to your satisfaction beyond a reasonable doubt that the crime, or crimes, charged in the indictment, and every constituent element thereof, have been committed; that the same were committed within the Middle Judicial  
P. 1224

District of the State of Tennessee, Nashville Division; and that the defendant at the bar committed the crime, or crimes, in such manner as would make him guilty under the law heretofore defined and explained to you.

By reasonable doubt is not meant any possible or captious doubt that may arise in your minds, but it is that doubt engendered after the application of the reasoning or logical processes to the evidence in the case, and an inability after such to let the mind rest easily upon the certainty of guilt. Absolute certainty of guilt is not demanded by the law to convict on any criminal charge, but moral certainty is required, and this certainly is required as to every

*Charge to Jury*

proposition of proof requisite to constitute the offense, or offenses, charged.

You will take all of the evidence adduced in the case by the Government and by the defendant and give it a full, fair and impartial consideration. If there are conflicts in the statements of witnesses, it is your duty to reconcile them if you can, for the law presumes that every witness has sworn to the truth; but if you cannot, the law makes you the sole and exclusive judges of the credibility of witnesses and the weight to be given their testimony. In forming your opinions as to the credibility of a witness, you may look to proof, if any, of his general character; P. 1225

the manner and demeanor of the witness; the consistency or inconsistency of his statements; their probability or improbability; his ability and willingness to speak the truth; his intelligence and means of knowledge; his motive to speak the truth or swear to a falsehood.

When the defendant makes himself a witness in his own behalf, his credibility is judged by the same rules that the credibility of other witnesses is judged, and you will give to the defendant's testimony in this case such weight under the rules herein as you may think it entitled to receive.

Now, there are several methods of impeaching or discrediting a witness. One is to prove that a witness at different times has made conflicting statements as to the material facts of the case as to which he testifies.

Another is by a rigid and close cross-examination to involve the witness in contradictions and discrepancies as to material facts stated by him. Immaterial discrepancies in the statements of witnesses do not affect their credibility unless there is something to show that they originated in willful falsity.

*Charge to Jury*

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Still another method is to prove by credible witnesses that they know the general character of an assailed witness for the qualities of truth and veracity, and honesty and integrity, and from that general character the witness is not worthy of belief on his oath in a court of justice.

You, ladies and gentlemen of the jury, are to determine how far the testimony of any impeached witness in this case has been impaired by either of these invalidating processes. The fact that the character of the witness is assailed by a single witness casts a reproach upon him, and when the general character of the witness is assailed on the one hand and sustained on the other by witnesses, it then becomes a question to be decided by the jury, like all other questions of fact, and is not to be judged by the number of witnesses for or against, but by their respectability, intelligence, consistency and means of information.

There are two types of evidence from which a jury may properly find a defendant guilty of an offense. One is direct evidence, such as the testimony of an eyewitness. The other is circumstantial evidence, the proof of a chain of circumstances pointing to the commission of the offense.

P. 1227

As a general rule the law makes no distinction between direct and circumstantial evidence, but simply requires that, before finding a defendant guilty, the jury be satisfied of his guilt beyond a reasonable doubt from all of the evidence, both direct and circumstantial, in the case.

The Government has introduced evidence in this case which it contends shows that shortly after the incidents alleged in Count One of the indictment the defendant Osborn made false material statements to Judges of this court. If you find that this defendant did make statements to these Judges regarding the matters under inquiry and



*Charge to Jury*

pertinent thereto which were contrary to fact and did so willingly and with knowledge of their falsity, you are at liberty to consider these circumstances as evidence of such defendant's guilty conscience regarding the matters under inquiry. What is pertinent and whether the statements were contrary to fact and were made willingly and with knowledge, and whether to consider these statements or not, are matters for you as triers of fact to determine from all the evidence before you.

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If there has been evidence of good character of the defendant in this case for the qualities of truth and veracity, honesty and integrity, you may consider same along with all the facts and circumstances in the case, on the question of whether or not there exists, with respect to the separate counts of this indictment, a reasonable doubt concerning the guilt of the defendant. A person of good character for the qualities mentioned may, of course, violate the law but is not so likely to do so as a person of previous bad character.

When you retire to consider your verdict, you will first inquire if the defendant is guilty of the offense, or offenses, charged. If you find beyond a reasonable doubt the defendant guilty, you will so state in your verdict.

You will consider the two counts in the indictment separately and designate in your verdict on which count, or counts, the defendant is found guilty beyond a reasonable doubt, or on which count, or counts, he is found not guilty.

You will have a written form with you in the jury room on which you will write your verdict, ladies and gentlemen. The Clerk will have it ready for you at the proper time.

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You do not fix the punishment in your verdict. This is left to the sound discretion of the Court, who is supposed

*Charge to Jury*

to possess special competence in this field, that is, in the event you return a guilty verdict.

If upon all the proof you entertain a reasonable doubt of the defendant's guilt of the offense, or offenses, herein defined and explained to you, it is your duty to acquit the defendant, and your verdict will be not guilty.

And you will agree upon your verdict mutually and not through any gambling or speculative process. And of course, you understand, the Court feels sure, your verdicts must be by unanimous agreement.

With these general principles firmly fixed in your minds, you will apply them carefully to the facts and circumstances in this case under the law as given you in these instructions.

Now, ladies and gentlemen, in an effort to be helpful, may I say that the attitude and conduct of jurors at the outset of their deliberations are matters of considerable importance. It is not discreet for a juror upon entering

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the jury room to voice his determination to stand for a certain verdict. When one does that at the outset, his sense of pride may cause him to hesitate to recede from an announced position if and when shown that it is fallacious. Remember that you are not partisans or advocates in this matter, but are to considerable extent judges. The final test of the quality of your service will lie in the verdict or verdicts which you return to this courtroom, not in the opinions any of you may hold as you retire. Bear in mind that you will make a definite contribution to efficient judicial administration if you arrive at just and proper verdicts in this case. To that end, the Court reminds you that in your deliberations in the jury room there can be no triumph other than the ascertainment of the true facts

*Charge to Jury*

and a proper application of the law as given you by the Court.

Preliminary to your being accepted and sworn as jurors in this case, you were examined by counsel for both the Government and defendant as to your competency and qualifications to act as jurors in this case. As a part of such examination, each of you answered all questions asked by counsel. Your answers showed that you were competent and qualified to act as jurors in this case and the parties accepted you as jurors on the faith of your

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answers. The answers you then made to the questions in regard to your competency, qualifications, fairness, lack of prejudice and freedom from passion and sympathy are as binding on you now as they were then and should so remain until you are finally discharged from further consideration of this case. It would, of course, be improper for you to disregard the answers which rendered you competent as jurors.

Are there exceptions to the charge, gentlemen, the general charge?

MR. NORMAN: No exceptions.

MR. NEAL: No exceptions.

THE COURT: Take the case, ladies and gentlemen of the jury, consider it fairly and impartially, and report to the Court such verdicts as truth dictates and justice demands.

And your foreman to be selected by you after you enter the jury room will sign what verdicts you agree upon.

Just at a glance, it will seem that all of the jurors are up to par, and I am sure we are warranted at this time in excusing the two alternate jurors. I will say to you two,

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though, we certainly appreciate very much having had

*Charge to Jury*

you with us, and we hope it haan't inconvenienced you too much to stay with us on this case. If you live at distances and you desire to spend the night in Nashville, and the hour is kind of late, I am sure the same facilities will be available to you at Government expense. You might speak to the Marshal about that.

Thank you very much. You two are excused.

(Two alternate jurors were thereupon excused and left the jury box.)

The Marshal can take the other jurors to dinner and bring them back, if you can, at eight o'clock for deliberations, to begin deliberations on this case, if that won't rush you too much.

And if it will take a little additional time, Mr. Marshal—you will have to take them to the hotel, I think, tonight, won't you?

THE MARSHAL: I am not for sure.

THE COURT: All right.

THE MARSHAL: Judge, there may be a place.

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THE COURT: All right.

Mr. Clerk, you will see to it that when the jurors return that they get a copy of the indictment and the form on which the verdicts are to be written.

And recess Court until eight o'clock.

Just a minute, though. Court will remain in session while we deal with these special requests, gentlemen.

The jury is excused, though, until eight o'clock.

(The jury thereupon retired from the courtroom, in recess for dinner before beginning deliberations upon its verdicts.)

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(The following occurred out of the presence and hearing of the jury.)



*Charge to Jury*

**THE COURT:** Come around on these special requests, gentlemen, if you will.

(The following occurred at the bench:)

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**MR. NORMAN:** Judge, we insist on all forty-four of them.

**THE COURT:** All right.

**MR. NORMAN:** And don't wish to withdraw any of them.

**THE DEFENDANT:** Some of them are covered, of course.

**THE COURT:** How is that?

**THE DEFENDANT:** I say some are covered.

**MR. NORMAN:** Some of them are in part.

**THE COURT:** All right, you will make your statement, maybe, of the reasons for your exceptions —

**MR. NORMAN:** We have submitted authorities on it.

**THE COURT:** (Continuing) —at this time.

**MR. NORMAN:** Well, —

**THE COURT:** Well, you know, something to the effect that they do contain—that they represent the law of this case and are not otherwise covered in the general charge, and I would say that would be enough.

**MR. NORMAN:** Yes, sir.

**THE COURT:** If you gentlemen agree to that.

**MR. NORMAN:** That would be agreeable.

**THE COURT:** At this late hour, we can shorten that

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a little bit.

(Said special requests are as follows:)

*Instructions Requested by Defendant*

**INSTRUCTIONS REQUESTED BY DEFENDANT**

**"Defendant's Requested Instruction No. 1**

**Refused—Boyd, J.**

"A defendant is presumed to be innocent and such presumption remains with him throughout the trial until the jury is satisfied of his guilt beyond all reasonable doubt."

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**"Defendant's Requested Instruction No. 2**

**Refused—Boyd, J.**

"The Government has the burden of proof to prove its case beyond a reasonable doubt and the burden remains with the Government throughout the entire trial and never shifts."

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**"Defendant's Requested Instruction No. 3**

**Refused—Boyd, J.**

"Every material part of the accusation as stated in the indictment must be proved by the Government beyond a reasonable doubt."

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**"Defendant's Requested Instruction No. 4**

**Refused—Boyd, J.**

"There are three separate counts in this indictment for your consideration. You are to consider each of these counts as if they were standing alone as a separate case, and you will not consider as to one case any evidence which was offered with relation to any of the other cases, for each count must stand alone and your consideration of such count, and not on any other evidence introduced during the trial of this case."

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*Instructions Requested by Defendant*

**"Defendant's Requested Instruction No. 5**

----- Refused—Boyd, J.

"An indictment is but a formal method of accusing a defendant of a crime. It is not evidence of any kind against the accused and does not create any presumption or permit any inference of guilt."

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**"Defendant's Requested Instruction No. 6**

----- Refused—Boyd, J.

"The Court instructs the jury that any verdict that you render must be unanimous, that it must be agreed to by the jurors, and that it must be the verdict of each juror as an individual as well as of the jury as a whole; that no juror should vote for conviction unless he is convinced in his own mind beyond a reasonable doubt that under the evidence and the Court's instructions the defendant is guilty; and no juror should set aside his opinion for the mere sake of expediency."

**"Defendant's Requested Instruction No. 7**

----- Refused—Boyd, J.

"It is the duty of every individual juror to decide the facts according to his own conclusions. While he should discuss the evidence with his fellow jurors and consider the same with them, each juror must finally vote only in accordance with his own honest conclusion, whether that conclusion concurs with his fellow jurors or not."

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**"Defendant's Requested Instruction No. 8**

----- Refused—Boyd, J.

"You should not bring to your consideration of this case any preconceived opinions on political or economic

*Instructions Requested by Defendant*

or social theories. We sometimes hear people that that they believe that so and so is guilty, or not guilty of some charge, on general principles. That would not be proper for you to do in this case and you would be false to the oath which you have taken if you have any such preconceived ideas and you let them enter into your consideration of this case. It is your duty to determine whether the evidence adduced herein establishes beyond all reasonable doubt that a particular defendant is guilty of the particular charge contained in the indictment herein and nothing else.”

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“Defendant’s Requested Instruction No. 9

Refused—Boyd, J.

“The evidence in the case consists of the sworn testimony of the witnesses, all exhibits which have been received in evidence, all facts which have been admitted or stipulated and all applicable presumptions stated in these instructions. Any evidence as to which an objection

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was sustained by the Court, and any evidence ordered stricken by the Court must be entirely disregarded.”

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“Defendant’s Requested Instruction No. 10

Refused—Boyd, J.

“Whenever the Court has sustained an objection to a question, you are to disregard that question, and you may draw no inference from the wording of it nor speculate as to what the witness would have said if permitted to answer. Nor may you assume any party has objected to a question because that party expected the answer, if given, to be unfavorable.”

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*Instructions Requested by Defendant*

**"Defendant's Requested Instruction No. 11**

**Refused—Boyd, J.**

"During the trial of this case the Court has permitted certain evidence to be introduced over the objection of counsel. In so ruling the Court has not determined or indicated any opinion as to the weight or effect of such evidence or intended to indicate any opinion thereby respecting the guilt or innocence of the defendant. In

P. 1240

judging the credibility of witnesses and the weight and effect of evidence, you are not to consider the rulings or commitments of the Court in admitting or rejecting evidence."

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**"Defendant's Requested Instruction No. 12**

**Refused—Boyd, J.**

"The Defendant has entered a plea of not guilty to each count of the indictment. The effect of his plea of not guilty is to deny each material allegation of each count of the indictment and to place on the Government the burden of proving each material allegation or element of the offense as to the Defendant by competent and believable evidence beyond and to the exclusion of every reasonable doubt. If the Government has failed to prove each material allegation of the charge against him in the indictment, beyond and to the exclusion of every reasonable doubt, or if you are in doubt as to whether the Government has so proven each material allegation of the charge against the Defendant then it is your duty and I hereby order and direct you to acquit the Defendant."

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*Instructions Requested by Defendant*

**"Defendant's Requested Instruction No. 13**

**Refused—Boyd, J.**

**"A reasonable doubt is a fair doubt based upon reason and common sense and arising from the state of the evidence. Proof beyond a reasonable doubt is established if the evidence is such as you would be willing to rely and act upon in the most important of your own affairs. A defendant is not to be convicted on mere suspicion or conjecture.**

**"A reasonable doubt may arise not only from the evidence produced but also from a lack of evidence. Since the burden is upon the prosecution to prove the accused guilty beyond a reasonable doubt on every essential element of the crime charged, a defendant has the right to rely upon failure of the prosecution to establish such proof. A defendant may also rely upon evidence brought out on cross-examination of witnesses for the prosecution.**

**"A reasonable doubt exists in any case when, after careful and impartial consideration of all the evidence, the jurors do not feel convinced to a moral certainty that defendant is guilty of the charge."**

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**"Defendant's Requested Instruction No. 14**

**Refused—Boyd, J.**

**"The guilt of an accused is not to be inferred because the facts proven are consistent with his guilt, but on the contrary, before there can be a verdict of guilty, you must believe from all the evidence, and beyond every reasonable doubt, that the facts proven are inconsistent with his innocence. If two conclusions can reasonably be drawn from the evidence, one of guilt, you should adopt the one of innocence.**

*Instructions Requested by Defendant*

“Thus, as to the evidence introduced in support of any count of the indictment, if two conclusions can reasonably be drawn from the evidence as to the guilt or innocence of the Defendant, you should adopt the one of innocence and enter a verdict of not guilty as to the Defendant.”

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“Defendant’s Requested Instruction No. 15

Refused—Boyd, J.

“You are justified in your consideration of the evidence in drawing reasonable inferences from proven facts, but inferences cannot be based on inference.

P. 1243

“Thus, as to any count of the indictment, if you find that the competent evidence there established is as consistent with innocence as with guilt, or that you find any reasonable doubt by such competent evidence the guilt of the accused, then you are ordered and directed to enter a verdict of not guilty as to the Defendant.”

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“Defendant’s Requested Instruction No. 16

Refused—Boyd, J.

“The defendant is presumed to be innocent and the burden is upon the government to prove the guilt of the defendant beyond a reasonable doubt. This presumption of innocence is a substantial right which the law affords to a defendant and it follows the defendant throughout the trial and entitles him to an acquittal at your hands unless his guilt has been proven beyond a reasonable doubt. You are instructed that if upon consideration of all the evidence, you have reasonable doubt in your mind of the guilt of the defendant, it is your duty to acquit the defendant. It is not sufficient for the government to establish a probability of possibility of guilt, but the

P. 1244

*Instructions Requested by Defendant*

evidence must establish guilt of the charge to a moral certainty and beyond a reasonable doubt."

**"Defendant's Requested Instruction No. 17**

**Refused—Boyd, J.**

"The Court instructs the jury that the law clothes the defendant with the presumption of innocence, which presumption attends and protects him unless and until it is overcome by evidence which proves his guilt beyond a reasonable doubt, which means that the evidence of his guilt as charged must be clear, positive and abiding and fully satisfy the minds and consciences of the jury. It is not sufficient in a criminal case to justify a verdict of guilt that there may be strong suspicions or even strong probabilities of guilt; but the law requires proof by legal and credible evidence, of such nature, that when it is all considered it produces a clear, undoubting and entirely satisfactory belief of the guilt of a defendant, and the burden of proving such guilt is upon the prosecution. This much is required by law. If this much has not been proven, you must find the defendant not guilty."

**P. 1245**

**"Defendant's Requested Instruction No. 18**

**Refused—Boyd, J.**

"If two conclusions can reasonably be drawn from the evidence, one of innocence and one of guilt, you should adopt the one of innocence. Thus, as to the evidence introduced in support of any count of the indictment if two conclusions can reasonably be drawn from the evidence as to the guilt or innocence of the Defendant on such count, you should adopt the one of innocence and enter a verdict of not guilty as to the Defendant on such count or counts."



*Instructions Requested by Defendant*

**"Defendant's Requested Instruction No. 19**

**Refused—Boyd, J.**

"In considering this case and in passing upon your verdict, you are not required to set aside your own common observation and experience as men and women in the affairs of life, but on the other hand, you have a right upon consideration of all the evidence in this case, in the light of your own common observation and common experience as men and women in the affairs of life, to say where the truth lies upon any material fact in this case."

P. 1246

**"Defendant's Requested Instruction No. 20**

**Refused—Boyd, J.**

"In determining the facts, you must of necessity depend a great deal upon the testimony of witnesses; therefore, the law has made you also, the judges of the weight and credibility to be attached to the evidence given by every witness. In considering the testimony of a witness, you may consider, among other things, his manner on the witness stand; the way in which he testified; his possible interest in the subject matter, or outcome of the case; his apparent candor and fairness, or lack thereof; the consistency or inconsistency of his statements; his bias or prejudice, if such is apparent; his intelligence; his opportunity of knowing the facts; whether or not his testimony is supported or contradicted by other witnesses; the reasonableness or unreasonableness of the story told which may aid you in judging the truth or falsity of the testimony of the witness.

"If you find, upon consideration of the evidence, that any witness for either side has willfully testified falsely to a material fact, you must disregard such false testi-

*Instructions Requested by Defendant*

mony and you may disregard the entire testimony of such witness."

P. 1247

**"Defendant's Requested Instruction No. 21**

**Refused—Boyd, J.**

"If a witness is shown knowingly to have testified falsely concerning any material matter in this cause, you have a right to distrust such witnesses testimony in other particulars; and you may reject all of the testimony of that witness, or give it such credibility as you may think it deserves."

**"Defendant's Requested Instruction No. 22**

**Refused—Boyd, J.**

"A witness may be discredited or impeached by evidence that his self-interest or attitude is shown to be such as might tend to prompt testimony unfavorable to the accused.

"If you believe that the prosecutors or Government agents have pursued a course of action in this case of threatening to indict citizens who will not cooperate with them; or of threatening citizens with loss of their jobs if they do not cooperate, or giving immunity or benefits or promises of immunity to citizens, in return for cooperation with the Government; and if you believe that the prosecution witnesses had knowledge of such threats

P. 1248

or promises, then I charge you that the testimony of such witness or witnesses should be considered with caution and weighed with great care."

**"Defendant's Requested Instruction No. 23**

*Instructions Requested by Defendant*

“The Court instructs the jury that there has been testimony that certain of the witnesses for the Government do not have a good reputation in their communities for truthfulness and veracity, and that they cannot be believed under oath. You are instructed that you may consider such testimony in determining the credibility, veracity, and truthfulness of their testimony, and you are at liberty by reason thereof to disregard their testimony in its entirety.”

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“Defendant’s Requested Instruction No. 24

Refused—Boyd, J.

“In considering the testimony of the witness Vick the Court charges you that a witness may be discredited or impeached by evidence that he is a paid informer for the P. 1249 prosecution.

“If you believe that the witness Vick has been so impeached and thus discredited then the Court charges you that the testimony of the witness Vick should be considered by you with caution and weighed with great care.”

---

“Defendant’s Requested Instruction No. 25

Refused—Boyd, J.

“A witness may be discredited or impeached by evidence that his self-interest is shown to be such as might tend to prompt testimony unfavorable to the accused.

“The witness Beard has admitted under oath that he is presently awaiting trial on disbarment charges.

“In considering his testimony you may consider whether his testimony was motivated by fear, threats, or the hope of leniency.

“If you believe that the witness Beard has been impeached and thus discredited the Court instructs you

*Instructions Requested by Defendant*

to consider his testimony with caution and weighed with great care."

P. 1250

"Defendant's Requested Instruction No. 26

Refused—Boyd, J.

"In considering the testimony of the witnesses Vick and Beard, the Court charges you that a witness may be discredited or impeached by evidence that the general reputation of the witnesses for truth, veracity, honesty or integrity is bad.

"If you believe the witnesses Vick and Beard have been impeached and thus discredited, it is your exclusive province to give their testimony only such credibility, if any, you may think that it deserves."

"Defendant's Requested Instruction No. 27

Refused—Boyd, J.

"Part of the evidence before you is what is known as circumstantial evidence. Circumstantial evidence is that sort of evidence by which the inference of an unknown fact is drawn from the existence of known facts. Circumstantial evidence should be received and acted upon with the utmost caution. Before you are warranted in convicting upon circumstantial evidence, there must be such a well connected and unbroken chain of circum-

P. 1251

stances as to exclude all other reasonable hypothesis but that of guilt. "Hypothesis" means simply supposition or theory. The circumstances must not only be consistent with guilt, but they must also be inconsistent with innocence.

"Thus, if in any of the counts of the indictment, the circumstances presented both by the prosecution and by



*Instructions Requested by Defendant*

the defense leads you to believe that there can be an explanation other than that requiring the conclusion of guilt, and in fact consistent with innocence, then you are instructed and directed to enter a verdict of not guilty as to the Defendant as to such count or counts of the indictment."

---

**"Defendant's Requested Instruction No. 28**

Refused—Boyd, J.

"One of the elements of the offense charged is a specific intent, that is to say the government must show that the defendant acted with a specific intent. Specific intent means more than a mere general intention to perform an act in violation of the law. It means an intent to do some act which tends corruptly to endeavor to influence, intimidate and impede a juror in the discharge

P. 1252

of his duty as such juror. If you do not find that the defendant acted with such intent or if you find that such intent on the part of the defendant has not been proved by the government beyond a reasonable doubt, then you must find the defendant not guilty."

---

**"Defendant's Requested Instruction No. 29**

Refused—Boyd, J.

"You will note that the acts charged in the indictment are alleged to have been done "unlawfully." Unlawfully means contrary to law. Hence to do an act "unlawfully" means to do willfully something which was contrary to law.

"An act is done "willfully" if done voluntarily and purposely and with the specific intent to do that which the law forbids; that is to say with bad purpose either to disobey or to disregard the law.

*Instructions Requested by Defendant*

“Unless you find as to the defendant that the government has proved beyond any reasonable doubt, and to a moral certainty that the act alleged in the indictment was done “willfully” then you are hereby directed and ordered to enter a judgment of acquittal as to such defendant.  
P. 1253

Or stated in another fashion, unless you find that the act done by the defendant was with bad purpose and with the specific intent to do that which the law forbids, you are ordered and directed to enter a judgment of acquittal, as to the defendant.”

“Defendant’s Requested Instruction No. 30

Refused—Boyd, J.

“You are further instructed that the word “corruptly” means morally perverted or depraved as well as meaning that the act which is done was done with a bad purpose either to disobey or to disregard the law. If you should find that the government has failed to prove beyond any reasonable doubt that the act done by the defendant was a corrupt act then you must and you are hereby directed to enter a finding of not guilty as to the defendant.”

P. 1254

“Defendant’s Requested Instruction No. 31

Refused—Boyd, J.

“Evidence of a circumstantial nature has been introduced in this case. In order to warrant a conviction upon circumstantial evidence, the facts proved must not only be consistent with the guilt of the accused but also must be inconsistent with any rational theory of his innocence, and all of such facts taken together must prove the guilt of the defendant beyond a reasonable doubt before you can return a verdict of guilty.

*Instructions Requested by Defendant*

"Therefore, if you find and believe that the facts proved are not consistent with the guilt of the defendant, or that such facts are not inconsistent with any rational theory of the innocence of the defendant, or if all of such facts taken together do not prove the guilt of the defendant beyond a reasonable doubt, you must find the defendant not guilty."

P. 1255

"Defendant's Requested Instruction No. 32

Refused—Boyd, J.

"There is no obstruction of justice unless justice is actually being administered and is actually obstructed. A mere attempt to endeavor to obstruct justice which itself is unsuccessful is not an obstruction of justice. Thus, otherwise stated, if you find that the acts proven by the government in Count One, Two and Three fail to establish beyond any reasonable doubt an endeavor to obstruct justice, you shall enter a verdict of not guilty as to the Defendant. If you find that the acts proven by the government establish a mere attempt to endeavor which is unsuccessful, you shall enter a verdict of not guilty as to the Defendant."

"Defendant's Requested Instruction No. 33

Refused—Boyd, J.

"Certain terms that I have used in these instructions should be explained to you. In these instructions the following definitions are applicable:

"1. "Willfully" means done voluntarily and purposely with the specific intent in mind to do that which the law forbids; that is to say, with the purpose either

P. 1256

to disobey or disregard the law.

*Instructions Requested by Defendant*

"2. "Unlawfully" means contrary to law.

"3. "Knowingly" includes actual knowledge of the facts. However, it is not sufficient to prove that an act was done "knowingly" by evidence that the person had knowledge of the act; it must also be proved that with actual knowledge the act was done with a bad purpose.

"4. "Corruptly" means morally perverted or depraved.

"5. "Endeavor" means a serious determined effort.

"6. "Influence" means to sway.

"7. "Intimidate" means to frighten and threaten.

"8. "Impede" means to hinder and obstruct.

"9. "Obstruction of justice" means actual interference with the administration of justice. There is no obstruction of justice unless justice is actually being administered and is actually obstructed. A mere attempt which is unsuccessful is not an obstruction of justice."

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**"Defendant's Requested Instruction No. 34**

**Refused—Boyd, J.**

"You will note that the acts charged in the indictment alleged to have been done to impede the due administration of justice. The word "impede" means to hinder, hence the indictment may be interpreted to mean that the defendant is charged with endeavoring to hinder the due administration of justice.

"Thus, if you find that the government has failed to prove beyond any reasonable doubt that the acts charged endeavored to hinder the due administration of justice, you must enter verdict of not guilty as to the defendant."

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**"Defendant's Requested Instruction No. 35**

**Refused—Boyd, J.**



*Instructions Requested by Defendant*

"The Court instructs the jury that the evidence adduced as to Count One (1) of the indictment is insufficient as a matter of law to justify a conviction, and accordingly you are directed to return a verdict of Not Guilty as to the defendant on Count One (1)."

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"Defendant's Requested Instruction No. 36

Refused—Boyd, J.

"The Court instructs the jury that the evidence adduced as to Count Two (2) of the indictment is insufficient as a matter of law to justify a conviction, and accordingly you are directed to return a verdict of Not Guilty as to the defendant on Count Two (2)."

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"Defendant's Requested Instruction No. 37

Refused—Boyd, J.

This Count 3 withdrawn

"The Court instructs the jury that the evidence adduced as to Count Three (3) of the indictment is insufficient as a matter of law to justify a conviction, and accordingly you are directed to return a verdict of Not Guilty as to the defendant on Count Three (3)."

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"Defendant's Requested Instruction No. 38

Refused—Boyd, J.

"The defendant has offered evidence of his reputation for good character. This evidence has been admitted for your consideration together with all the other evidence

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heard by you in this case, and it must be considered by you with such other evidence for the guilt or innocence of the defendant must be determined from all of the

*Instructions Requested by Defendant*

testimony you have heard. You, the jury, are to determine the weight to be given this testimony.”

“Defendant’s Requested Instruction No. 39

Refused—Boyd, J.

“Evidence of the defendant’s established reputation for good character may alone create a reasonable doubt as to the defendant’s guilt where without it the other evidence might be convincing. Evidence of an established reputation for good character greatly strengthens the presumption of innocence to which the defendant is entitled by law.”

“Defendant’s Requested Instruction No. 40

Refused—Boyd, J.

“In determining the credibility of the defendant and the weight to be given his testimony, you may consider the evidence which has been admitted respecting the defendant’s established reputation for good character,  
P. 1260

truthfulness and veracity, honesty and integrity.”

“Defendant’s Requested Instruction No. 41

Refused—Boyd, J.

“Evidence of the defendant’s established reputation for good character may be considered by you together with the other testimony heard in the case, in determining whether the defendant acted corruptly and with the specific intent to violate the law necessary to a conviction on any of the counts of the indictment. Evidence of the defendant’s established reputation for good character, depending upon the weight to which you determine it should be given, may alone create a reasonable doubt of the defendant’s guilt, even though without the evi-

*Instructions Requested by Defendant*

dence of reputation for good character the other testimony might be convincing."

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"Defendant's Requested Instruction No. 42

Refused—Boyd, J.

"Entrapment is a good and valid defense and an accused who has been entrapped, as I shall define that term, is entitled to a verdict of not guilty. Entrapment occurs when the criminal conduct was the product of the creative activity of law enforcement officials. Entrapment is recognized as a defense because the function of law enforcement is the prevention of crime and the apprehension of criminals. Manifestly that function does not include the manufacturing of crime.

"However, the fact that government agents merely afford opportunities or facilities for the commission of an offense does not constitute entrapment. To determine whether entrapment has been established, a line must be drawn between the trap for the unwary innocent and the trap for the unwary criminal. Thus, the Court has admitted for your consideration evidence respecting the conduct of the government agent and has also permitted the defendant to be subjected to an appropriate and searching inquiry into his own conduct and predisposi-

P. 1262

tion as bearing on his claim of innocence.

"The principles respecting reasonable doubt, the credibility of witnesses and the essential elements of the offense charged are applicable to the defense of entrapment, although the defense of entrapment is an affirmative defense and the burden of going forward with proof of entrapment rests on the defendant. If the evidence of entrapment which has been admitted for your considera-

*Instructions Requested by Defendant*

tion creates in your mind a reasonable doubt as to the guilt of the defendant, unless the proof convinces you beyond a reasonable doubt that the government agent merely afforded an opportunity or facility for the commission of an offense, you must vote to acquit the defendant and not guilty will be your verdict."

**"Defendant's Requested Instruction No. 43**

Refused—Boyd, J.

"The defense of entrapment involves, in legal contemplation, two aspects or elements with respect to which there are different or shifting burdens of proof. The burden of proof rests upon the defendant to establish

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that the criminal conduct was the result or product of the creative activity of law enforcement officials. After an accused has presented evidence establishing the defense of entrapment, the burden of proof shifts to the prosecution which must prove to your satisfaction and beyond a reasonable doubt that the conduct of law enforcement officials did not constitute entrapment and that the government agents merely afforded opportunities or facilities for the commission of an offense to one already desiring to commit an offense. If the testimony relating to this issue, including evidence of the defendant's established reputation for good character, creates and leaves in your mind a reasonable doubt as to the guilt of the defendant, you should vote to acquit the defendant and not guilty will be your verdict."

**"Defendant's Requested Instruction No. 44**

Refused—Boyd, J.

"It is the theory and position of the defendant with respect to the charge made against him in the first count



*Proceedings*

of the indictment, that he was entrapped by the government agent and informer, Robert D. Vick, within the P. 1264

meaning of the defense of entrapment as I have heretofore defined that term. The defendant insists that the conduct charged against him was the product of the creative activity of law enforcement officials. The defendant insists that he was not already predisposed to commit the act charged against him and that he was a person otherwise unwilling to commit the criminal act charged against him. You are to consider all of the testimony relating to this issue which has been admitted into evidence before you and if this evidence creates a reasonable doubt of the guilt of the defendant, you should vote to acquit the defendant and not guilty should be your verdict."

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PROCEEDINGS

THE COURT: All right, Mr. Clerk.

MR. NORMAN: And does Your Honor want—no, I have written on this one.

THE COURT: No, these are the ones I have written on. They go in the file.

Recess Court until eight o'clock, Mr. Clerk, if you haven't already done it—Mr. Clerk.

(Recess.)

(At eight o'clock P.M., the jury reported to the jury room, following dinner recess, to begin deliberations upon their verdicts.)

(At nine o'clock P.M., the following occurred:)

THE COURT: I would like to have the lawyers come up to the bench.

*Proceedings*

(The following occurred at the bench, and while the jury was out of the courtroom:)

THE COURT: We have this message from the jury. It says, "Get testimony of Osborn on the Ralph Elliott P. 1266

case."

MR. NORMAN: Get testimony of Osborn on the Ralph Elliott case—I don't know what that means.

MR. HOOKER: Well, I suppose it means they want to see the transcript.

MR. NORMAN: Well, of course, as I understand, they can't have the transcript of the evidence. As I understand, they can't do that.

THE COURT: Unless you gentlemen agree to it, they couldn't, certainly.

MR. NORMAN: May I talk with my client?

(Counsel confers with defendant)

MR. HOOKER: Of course, we would agree to it, but I wouldn't blame them for not agreeing.

(Off-the-record discussion.)

MR. NORMAN: We don't think they can see the evidence.

THE COURT: What do you say, Mr. Norman?

MR. NORMAN: No, sir, I don't think they can see it.

THE COURT: I think if they indicated exactly what they have in mind that it would be a discretionary thing with the Court to read parts of it to the jury.

Isn't that the rule on that?

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MR. NEAL: That is the rule, as I understand it, that it is within the discretion of the Court, if they specify what they want read. I agree they can't have the transcript. I understand the Court can read—of course, if they asked

*Proceedings*

to have the whole testimony, if they want the whole Osborn testimony—I don't think that was indicated.

MR. HOOKER: They wanted it read in Chattanooga, and then went back, and never did ask for it any more.

MR. NEAL: The Judge said he would read it, but he told them first they ought to try to resolve it without reading it, but if they couldn't resolve it without reading it he would read whatever portions they wanted.

THE COURT: Then they didn't call for it?

MR. HOOKER: No, then they went back and never did call for it.

THE COURT: Mr. Norman, what do you think about that?

MR. NORMAN: Don't think you can do it. I would except to it.

THE COURT: To inquiring what it is they have in mind?

MR. NORMAN: I would except to that, Your Honor. We would except to it.

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THE COURT: All right, bring the jury in, Mr. Marshal.

(The jury thereupon entered the courtroom at 9:05 P.M., and the proceedings in the case were continued in the presence and hearing of the jury, as follows:)

THE COURT: Who is foreman of the jury?

(Juror D. G. McKnight stands.)

THE COURT: Just keep your seat.

Mr. Foreman, you have sent this note out to the Court: "Get testimony of Osborn on the Ralph Elliott case."

THE FOREMAN: Yes, sir.

THE COURT: What is it that you have in mind in particular, if you don't—?

THE FOREMAN: We were trying to arrive, Your

*Proceedings*

Honor, on the basis of an entrapment. We want to settle that proposition.

THE COURT: Just have a seat.

Mr. Osborn was on the witness stand for nearly a day and the testimony—his testimony has been transcribed and is available. But can you designate any particular part of his testimony that the jury is interested in?

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THE FOREMAN: Well, Your Honor, it would be I think about the first part of the testimony, probably the first half of it or the first third of it.

THE COURT: All members of the jury would like to hear it read?

THE FOREMAN: Yes, sir, Your Honor, they would all like to hear it read.

If Your Honor may—if I may say, Your Honor, that this case has been so long, there are some of the facts that they have become confused on some of the facts. There are so many details that they would like to be refreshed on it.

THE COURT: Well, the inquiry concerning the unlawful entrapment phase of it runs all through this trial, and if the Court undertook to read or have read to you parts of it that could cause right considerable mischief.

You are to consider all the evidence in the case, you know. And by reading parts of it—only parts of it you might—your impression, as I say, insofar as these parts you have heard read would be more complete than others, you know—other parts of the testimony.

As I say, the testimony on that phase of the case runs all through this trial. It would be a right considerable task, and if we undertook to read all this testimony you

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*Proceedings*

can see what that would mean.

I think this is a matter that the jury can resolve without resorting to that procedure.

It is a matter concerning which the Court has some discretion. I will say that to you. I want to be helpful in every way. But I just doubt if it would serve any good purpose to start in reading parts of this testimony. It could cause considerable mischief if we attempted that.

I am going to suggest to you that you go back and see if you can resolve your differences, if there are any differences among you on that particular phase of the matter, and see how you get along, gentlemen.

THE FOREMAN: Well, I might add, Your Honor, that this request was made by members of the jury that were a little confused.

THE COURT: Yes. Well, I understood that. I understood that.

(Thereupon, the jury again retired to deliberate further upon its verdicts.)

(At 10:50 o'clock P.M., the jury returned to the courtroom and took their seats in the jury box, whereupon the following occurred:)

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THE COURT: Mr. Foreman, has the jury agreed on verdicts?

THE FOREMAN: We have, Your Honor.

THE COURT: All right, let the defendant stand.

(The Defendant stands.)

THE COURT: Read the jury's verdicts, if you will, please, sir.

THE FOREMAN: We, the jury, for our verdict say we find the defendant, Z. T. Osborn, Jr., as to the issues joined,

*Proceedings*

as to the first count of the indictment guilty, as to the second count of the indictment not guilty.

THE COURT: Is that the verdict of you all, ladies and gentlemen?

JUROS: Yes, sir. Yes, sir. Yes, sir.

THE COURT: So say you all?

JUROS: Yes, sir. Yes, sir. Yes, sir.

THE COURT: Do you desire to have the jury polled, Mr. Norman?

MR. NORMAN: No, Your Honor.

THE COURT: All right. Thank you very much, ladies and gentlemen for your services in this case.

P. 1272

And you are excused finally.

Take the jury's verdict there, Mr. Clerk.

If some of you, I know, live at a distance I am sure, and if you need accommodations tonight, the Marshal will take care of that. The hour is late, nearly eleven o'clock.

Adjourn court—

Just a moment. The jury is excused.

Let me see that verdict there.

All right.

(Thereupon, the jury was excused.)

THE COURT: Mr. Norman, will there be a motion for a new trial?

MR. NORMAN: Yes, Your Honor.

THE COURT: All right, file your motion under the rules and—

MR. NORMAN: May it please the Court, could we have a little additional time, Your Honor? Your Honor understands that I have been in quite a lot of strain here, and I want to review all of this, of course, for my motion.

THE COURT: Well, the motion must be filed under the rules within ten days, is that right?

*Defendants Ex. No. 3*

P. 1273

**THE DEFENDANT:** Five days.

**THE COURT:** Five days?

**MR. NORMAN:** Five days.

**THE COURT:** Do you need additional time?

**MR. NORMAN:** Yes, sir.

**THE COURT:** To file your motion?

**MR. NORMAN:** I will appreciate it.

**THE COURT:** Well, what is the rule on that?

**MR. HOOKER:** It can be extended for five days.

**THE COURT:** To an extra five days?

**MR. HOOKER:** We have done that.

**THE COURT:** All right, take ten days, then, within which to file the motion. And the Court will hear the motion on Friday, June the 19th at nine-thirty. Make it ten o'clock. Ten o'clock.

All right, adjourn Court, Mr. Clerk. Adjourn it. All right.

(Adjournment)

**DEFENDANTS EXHIBIT NO. 3**

**FEDERAL BUREAU OF INVESTIGATION**

May 8, 1964

**ROBERT D. VICK**, 2103 Martha Street, Nashville, Tennessee, advised that he had received word through **HARRY CHILDRESS** on May 1, 1964, that "nothing will happen" until the first part of the next week, meaning that he, **VICK**, would not be contacted regarding an alleged offer of \$50,000 and a \$9,000 per year job until that time. **VICK** was questioned as to how and when **CHILDRESS** had "received word" concerning the above matter. He replied that **CHILDRESS** had received word the previous night. He was unable to explain how **CHILDRESS** received the in-

*Defendants Ex. No. 3, Continued*

formation indicating that CHILDRESS did not have a telephone.

VICK volunteered that he intended to "put the word out" that he was not interested in any offer from anyone designed to prevent his testimony at the trial of OSBORN.

Defendant's Exhibit No. 3.

Filed: May 27, 1964.

ANDREW H. MIZELL, Clerk

Case No. 13484

By GUY W. COOPER, D.C.

On 5/1/64 at Nashville, Tenn. File # Memphis 72-50.

By SA EDWARD T. STEELE: BL, 5/5/64.

**FEDERAL BUREAU OF INVESTIGATION**

May 8, 1964

ROBERT D. VICK, 2103 Martha Street, Nashville, Tennessee, furnished the following information:

VICK was informed at approximately 2:30 or 3:00 p.m. on May 5, 1964, by an acquaintance, HARRY CHILDRESS, that LAUREN (phonetic) ROBBINS and JIM NOLEN, both members of the Teamsters Union at Indianapolis, Indiana, were then in Nashville and desired to talk with VICK. VICK informed CHILDRESS that he would see and talk to ROBBINS and NOLEN at the Shelby Park Municipal Golf Course; however, ROBBINS and NOLEN were not willing to see VICK at the golf course and requested that VICK meet them that night at the Holiday Inn on James Robertson Boulevard, Nashville, Tennessee.

VICK advised that he thereafter, in company with HARRY CHILDRESS, met ROBBINS and NOLEN at the Holiday Inn and talked with them from approximately 8:30 p.m. on May 5, 1964, to 2:30 a.m., on May 6, 1964. VICK said that after much miscellaneous conversation pertaining to golf, baseball, and other sports, and matters unrelated, that either ROBBINS or NOLEN indicated that



*Defendants Ex. No. 3, Continued*

it was their understanding that the Government had paid VICK \$35,000 plus \$35 per day on a per diem basis, and had offered VICK a job in exchange for VICK's services to the Government in connection with the matter pertaining to TOMMY OSBORN. Thereafter, ROBBINS indicated that "they," meaning the Teamsters Union, were prepared to see that VICK did not lose any money and were prepared to make VICK a better offer in return for an affidavit and subsequent testimony from VICK to the effect that VICK had been employed as a Government agent since prior to November, 1963. It was indicated to VICK by either ROBBINS or NOLEN that such an affidavit and testimony would have the ultimate effect of obtaining a new trial for JAMES RIDDLE HOFFA and would be instrumental in acquittal of OSBORN on the ground of entrapment by the Government. VICK stated that ROBBINS and NOLEN asked VICK to talk with an attorney concerning the above matter and mentioned the names of JACQUES SCHIFFER, WILLIAM BUFALINO and FRANK REGANO. VICK stated that although he did not construe the above conversation as a firm offer, ROBBINS made it clear that he was acting on behalf of HOFFA and would get in touch with Hoffa within the next several days and would return in three or four days and be prepared to make a firm offer to VICK of \$250,000 if VICK would make the above mentioned affidavit and subsequently testify in court, in accordance with the affidavit.

VICK stated that he made no comment to either ROBBINS or NOLEN as to whether he would or would not be receptive to the above offer or whether or not he had acted as an agent for the Government prior to November, 1963, or whether he would agree to see ROBBINS and NOLEN again.

*Defendants Ex. No. 3, Continued*

VICK indicated that the above meeting and conversation took place in room 324 of the Holiday Inn located on James Robertson Boulevard in Nashville, and that looking out the window he observed what appeared to be a copper colored Chevrolet convertible which either ROBBINS or NOLEN indicated was the vehicle in which they had come to Nashville.

VICK recalled that during the above conversation, ROBBINS indicated that he wanted to show good faith by tendering \$5,000 or \$10,000 to VICK at that time and urged VICK to accept this money which VICK refused to do.

VICK indicated that although the meeting was a joint meeting with both ROBBINS and NOLEN, that ROBBINS did most of the talking.

VICK indicated that it was not his desire to see and talk with ROBBINS and NOLEN again and that it was his intention to send word to these individuals through HARRY CHILDRESS that he was not interested in any sort of offer in return for an affidavit and testimony by VICK mentioned above.

VICK described ROBBINS as follows:

Race: White

Sex: Male

Age: Approximately 45

Height: Approximately 5 feet 10-11 inches

Weight: Approximately 210 pounds—fat

Hair: Black

Hair cut as flattop

Complexion: Ruddy or red

Occupation: Secretary-Treasurer of Teamsters Local at Indianapolis.

VICK described NOLEN as follows:

Race: White

Sex: Male

Age: Approximately 45

*Defendants Ex. No. 3, Continued*

**Height:** Five feet, 10 inches

**Weight:** 175-185 pounds

**Hair:** Dark

**Eyes:** Brown, wears glasses

**FEDERAL BUREAU OF INVESTIGATION**

**May 8, 1964**

**ROBERT D. VICK**, 2103 Martha Street, Nashville, Tennessee, advised that **HARRY CHILDRESS**, who resides on Sylvan Street in Nashville, is a close acquaintance and is a former member of the Teamsters Union at Indianapolis, Indiana. He advised that **CHILDRESS** is currently unemployed and residing with his parents in Nashville. He indicated that **CHILDRESS** returned from a visit to Indianapolis, Indiana, on April 28, 1964, and told **VICK** that **LAUREN ROBBINS** and **JIM NOLEN**, both members of the Teamsters Local at Indianapolis, had informed **CHILDRESS** that "they," meaning the Teamsters Union, were now willing to pay **VICK** \$50,000 and provide him with a \$9,000 per year job if **VICK** would not testify against **TOMMY OSBORN** at **OSBORN**'s forthcoming trial in U. S. District Court at Nashville. **VICK** indicated that according to **CHILDRESS** **ROBBINS** and **NOLEN** were to come to Nashville on April 30, 1964, and contact either **VICK** or **CHILDRESS** regarding the above offer; however, neither **ROBBINS** nor **NOLEN** had arrived at Nashville as of late afternoon on April 30, 1964. **VICK** indicated that he had had no direct contact with either **ROBBINS** or **NOLEN** and further had had no direct contact or communication from any other members of the Teamsters Union or any other person wherein a direct offer had been made to **VICK** in an effort to prevent his testimony at the **OSBORN** trial.

**Government Exhibit No. 12**

VICK advised that the above is but a renewal of reported similar offers which have been related to him in the past, none of which have materialized insofar as a direct contact having been made to him and further that all of the information in his possession as to the alleged offer or plans of an offer had been made known to him by CHILDRESS.

On 4/30/64 at Nashville, Tenn. File # Memphis 72-50

**Government Exhibit No. 12**

by SA EDWARD T. STEELE: BL Date dictated 5/5/64.  
**EXHIBIT "D"**

Filed Nov. 20, 1963

**ANDREW H. MIZELL, Clerk**

**Memphis, Tennessee**

**November 13, 1963**

**RE: JAMES RIDDLE HOFFA; Z. THOMAS OSBORN**

**Labor Management Relations Act, 1947—Investigative Matter; Conspiracy; Obstruction of Justice.**

There follows a transcript of a tape recording of a contact between Z. THOMAS OSBORN, attorney-at-law, and ROBERT D. VICK, private investigator, on November 11, 1963, in the office of Mr. OSBORN, 218 Third Avenue North, Nashville, Tennessee:

(Traffic noise. Door opens and closes.)

VICK: "Good morning. How're you this mornning?"

Girl: Good morning.

VICK: Is TOMMY here?

Girl: There's somebody with him.

VICK: O. K. You know how long he'll be?

Girl: No, I think it's JOHN POLK.

VICK: JOHN POLK? You don't, he didn't say how long he'd be?



*Government Exhibit No. 12*

Girl: No. He's been in there about 10 minutes.

VICK: About 10 minutes? Well, I'll wait a minute.

(Sound of typewriter).

VICK: You still on your diet, honey?

Girl: Yes.

VICK: Does it get harder every day or easier?

Man: Hi Bob.

VICK: Hi Stan. How're you doing? Looks like you got an armload of work.

STAN: No, DELORES has got it.

VICK: Well, pardon me there DELORES.

(Typewriter noise).

VICK: Hi Rosemary.

Girl: Hi Bob.

(Man heard to give correction to stenographer changing word herein to wherein.)

(Traffic noise. Door opens and closes.)

Girl: You can go in now.

VICK: O. K., honey.

Hello, Mr. OSBORN.

OSBORN: Hello Bob, close the door, my friend, and let's see what's up.

VICK: How're you doing?

OSBORN: No good. How're you doing?

VICK: Oh, pretty good. You want to talk in here?

OSBORN: How far did you go?

VICK: Well, pretty far.

OSBORN: Maybe we'd better . . .

VICK: Whatever you say. Don't make any difference to me.

OSBORN: (Inaudible whisper).

VICK: I'm comfortable, but er, this chair sits good, but we'll take off if you want to, but

OSBORN: Did you talk to him?

VICK: Huh?

*Government Exhibit No. 12*

OSBORN: Did you talk to him?

VICK: Yeah. I went down to Springfield Saturday morning and talked to or

OSBORN: ELLIOTT?

VICK: ELLIOTT.

OSBORN: (Inaudible whisper).

VICK: Huh?

OSBORN: Is there any chance in the world that he would report you?

VICK: That he will report me to the FBI? Why of course, there's always a chance, but I wouldn't got into it if I thought it was very, very great.

OSBORN: Laughed.

VICK: You understand that.

OSBORN: (Laughing). Yeah, I do know. Old Bob first.

VICK: That's right. Don't worry. I'm gonna take care of old Bob and I know, and of course I'm depending on you to take care of Old Bob if anything, if anything goes wrong.

OSBORN: I am. I am. Why certainly.

VICK: Er, we had coffee Saturday morning and now he had previously told you that it's the son.

OSBORN: It is?

VICK: Yes, and not the father.

OSBORN: That's right.

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VICK: The son is RALPH ALDEN ELLIOTT and the father is RALPH DONNAL. ALDEN is er—MARIE, that's RALPH's wife who killed herself. That was her maiden name, ALDEN, see? Anyway, we had coffee and he's been on a hung jury up here this week, see?

OSBORN: I know that.

---

VICK: Well, I didn't know that but anyway, he brought that up so he got to talking about the last HOFFA case

*Government Exhibit No. 12*

being hung, you know, and some guy refused \$10,000 to hang it, see, and he said the guy was crazy, he should've took it, you know, and so we talked about and so just discreetly, you know, and course I'm really playing this thing slow, that's the reason I asked you if you wanted a lawyer down there to handle it or you wanted me to handle it, cause I'm gonna play it easy.

OSBORN: The less people, the better.

VICK: That's right. Well, I'm gonna play it slow and easy myself and er, anyway, we talked about er, something about five thousand now and five thousand later, see, so he did, he brought up five thousand see, and talking about about how they pay it off you know and things like that. I don't know whether he suspected why I was there or not cause I don't just drop out of the blue to visit him socially, you know. We're friends, close kin, cousins, but I don't ordinarily just, we don't fraternize, you know, and er, so he seemed very receptive for er, to hang the thing for five now and five later. Now, er, I thought I would report back to you and see what you say.

OSBORN: That's fine! The thing to do is set it up for a point later so you won't be running back and forth.

VICK: Yeah.

OSBORN: Then tell him it's a deal.

VICK: It's what?

OSBORN: That it's a deal. What we'll have to do—when it gets down to the trial date, when we know the date, tomorrow for example if the Supreme Court rules against us, well within a week we'll know when the trial comes. Then he has to be certain that when he gets on, he's got to know that he'll just be talking to you and nobody else. — — —

VICK: Social strictly.

OSBORN: Oh yeah.

VICK: I've got my story all fixed on that.

*Government Exhibit No. 13*

OSBORN: Then he will have to know where to, he will have to know where to come.

VICK: Well, er . . .

OSBORN: And, he'll have to know when.

VICK: Er, do you want to see him yourself? You want me to handle it or what?

OSBORN: Uh huh. You're gonna handle it yourself.

VICK: All right. You want to know it when he's ready, when I think he's ready for the five thousand. Is that right?

OSBORN: Well no, when he gets on the panel, once he gets on the jury. Provided he gets on the panel.

VICK: Yeah. Oh yeah. That's right. That's right. Well now, he's on the number one.

OSBORN: I know, but now . . .

VICK: But you don't know that would be the one.

OSBORN: Well, I know this, that if we go to trial before that jury he'll be on it but suppose the government challenges him over being on another hung jury.

VICK: Oh, I see.

OSBORN: Where are we then?

VICK: Oh, I see. I see.

OSBORN: So we have to be certain that he makes it on the jury.

VICK: Well now, here's one thing, TOMMY. He's a member of the CWA, see, and the Teamsters, or

OSBORN: Well, they'll knock him off.

VICK: Naw, they won't. They've had a fight with the CWA, see?

OSBORN: I think everything looks perfect.

VICK: I think it's in our favor, see. I think that'll work to our favor.

OSBORN: That's why I'm so anxious that they accept him.



*Government Exhibit No. 12*

VICK: I think they would, too. I don't think they would have a reason in the world to. I don't think that I'm under any surveillance or suspicion or anything like that.

OSBORN: I don't think so.

VICK: I don't know. I don't frankly think, since last year and since I told them I was through with the thing, I don't think I have been. Now FRED,

OSBORN: I don't think you have either.

VICK: You know FRED and I may not (pause), he may be too suspicious and I may not be suspicious enough. I don't know.

OSBORN: I think you've got it sized up exactly right.

VICK: Well, I think so.

OSBORN: Now, you know you promised that fella that you would have nothing more to do with that case.

VICK: That's right.

OSBORN: At that time you had already checked on some of the jury that went into MILLER's court. You went ahead and did that.

VICK: Well, here's another thing, TOMMY.

OSBORN: — — — church affiliations, background, occupation and that sort of thing on those that went into MILLER's court. You didn't even touch them. You didn't even investigate the people that were in Judge GRAY's court.

VICK: Well, here's the thing about it, TOMMY. Soon as this damn thing's over, they're gonna kick my ass out anyway, so probably FRED's too. So, I might as well get out of it what I can. The way I look at it. I might be wrong cause the Tennessean is not gonna have anything to do with anybody that's had anything to do with the case now or in the past, you know that. Cause they're too close to the KENNEDY's.

OSBORN: All right, so we'll leave it to you. The only thing to do would be to tell him, in other words your next

*Government Exhibit No. 12*

contact with him would be to tell him if he wants that deal, he's got it.

VICK: O. K.

OSBORN: The only thing it depends upon is him being accepted on the jury. If the government challenges him there will be no deal.

VICK: All right. If he is seated.

OSBORN: If he's seated.

VICK: He can expect five thousand then and

OSBORN: Immediately.

VICK: Immediately and then five thousand when it's hung. Is that right?

OSBORN: All the way, now!

VICK: Oh, he's got to stay all the way!

OSBORN: All the way.

VICK: No swing. You don't want him to swing like we discussed once before. You want him

OSBORN: Of course, he could be guided by his own b——, but that always leaves a question. The thing to do is just stick with his crowd. That way we'll look better and maybe they'll have to go to another trial if we get a pretty good count.

VICK: Oh. Now, I'm going to play it just like you told me previously, to reassure him and keep him from getting panicky, you know. I have reason to believe that he won't be alone, you know.

OSBORN: You assure him of that. 100%.

VICK: And to keep any fears down that he might have, see?

OSBORN: Tell him there will be at least two others with him.

VICK: Now, another thing, I want to ask you does JOHN know anything. You know, I originally told JOHN about me knowing.

OSBORN: He does not know one thing.

*Government Exhibit No. 12*

VICK: He doesn't know. O. K.

OSBORN: He'll come in and recommend this man — —  
— — and I'll say well just let it alone, you know.

VICK: Yeah. So he doesn't know anything about this  
at all.

OSBORN: Nothing.

VICK: Now he hasn't seen me. When I first came here  
he was in here, see.

OSBORN: — — — — We'll keep it secret. The way  
we keep it safe is that nobody knows about it but you and  
me — — — — where could they ever go?

VICK: Well that's it, I reckon, or I'll probably go down  
there. See, I'm off tonight. I'm off Sunday and Monday,  
see. That's why I talked to you yesterday. I had a notion  
to go down there yesterday cause I was off last night and  
I'm off again tonight.

OSBORN: It will be a week at least until we know the  
trial date.

VICK: O. K. You want to hold up doing anything fur-  
ther till we know.

OSBORN: Unless he should happen to give you a call  
and — — — — something like that, then you just tell him,  
whenever you happen to run into him.

VICK: Well, he's not apt to call, cause see

OSBORN: You were very circumspect.

VICK: Yeah. We haven't talked really definite and I  
think he clearly understands. Now, he might, it seemed to  
me that maybe he thought I was joking or, you know.

OSBORN: That's a good way to leave it, he's the one  
that brought it up.

VICK: That's right.

OSBORN: — — — —

VICK: Well, I knew he would before I went down there.

OSBORN: Well, — — —

VICK: Huh?

**Government Exhibit No. 12**

**OSBORN:** I'll be talking to you.

**VICK:** I'll wait a day or two.

**OSBORN:** Yeah. I would.

**VICK:** Before I contact him. Don't want to seem anxious and er

**OSBORN:** — — —

**VICK:** O. K. See you later.

(Woman's voice heard).

**VICK:** You want me to give her that bill for that other work?

**OSBORN:** Yes, give her the bill.

**VICK:** Any time?

**OSBORN:** Any time.

**VICK:** O. K.

**OSBORN:** But it will be a day or two before we will be able to pay it.

**VICK:** O. K.

**OSBORN:** O. K.

**VICK:** Thank you DELORES."

(Door opened and closed. Traffic noise. End of recording).

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.



**Motion for a New Trial**

**In The  
UNITED STATES DISTRICT COURT  
For the Middle District of Tennessee  
Nashville Division**

**UNITED STATES OF AMERICA**

**vs.**

**Z. T. OSBORN, JR.**

**Criminal**

**No. 13,484**

**MOTION FOR A NEW TRIAL**

The defendant, Z. T. Osborn, Jr., moves the Court to grant him a new trial for the following reasons:

1. The Court erred in denying the motion to dismiss the indictment on the ground that the grand jury which returned the same was neither fair nor impartial; and that it was illegally and improperly impaneled.

2. The Court erred in denying defendant's motion to dismiss the indictment on the ground that the grand jury was unfairly impaneled, and on the ground that the Court failed in its duty to ascertain on voir dire whether the prospective jurors were impartial.

3. The Court erred in overruling the defendant's motion to suppress the testimony of the witness Robert D. Vick respecting his conversations with the defendant occurring on and prior to November 11, 1963, and particularly that tape recording of said conversation of November 11, 1963, at the defendant's private office to which the said Vick had gained admittance by fraud and deceit and without identifying himself as an agent of the United States, all as set forth in the defendant's said motion and proven at the hearing.

4. The Court erred in overruling the defendant's motion to suppress and exclude his statement on November 19,

*Motion for a New Trial*

1963, before United States Judge William E. Miller at Chambers, which statement was obtained, according to the undisputed proof, by inducing the defendant to hope that he would, by making said statement, avoid being prosecuted for the things and matters alleged in the first count of the indictment, in this cause, all as described in said defendant's written motion to suppress and exclude said statement.

5. The Court erred in denying defendant's motion for judgment of acquittal made at the conclusion of the government's evidence.

6. The Court erred in denying defendant's motion for judgment of acquittal made at the conclusion of all of the evidence.

7. The verdict is contrary to the weight of the evidence.

8. The verdict is not supported by substantial evidence.

9. The Court erred in charging and instructing the jury that the defense of entrapment is based in part upon a contention by the defendant that evidence obtained by entrapment is inadmissible.

10. The Court erred in failing to give and read to the jury all of the defendant's requested instructions to the jury.

11. The Court erred in permitting the witness United States District Judge Frank Gray, Jr., to testify under the guise of giving rebuttal testimony, over the objection of the defendant, that it first came to the witnesses attention that the government had information about an effort to tamper with the jury on November 8, 1963, that he and Judge Miller had been furnished with an affidavit he conferred with Judge William E. Miller, that at that time the prosecutors advised him that they proposed to send Vick to Osborn's office with a tape recorder, that he and Judge Miller had agreed that it was necessary for further investigation to determine whether the charges were true or false

*Motion for a New Trial*

and that he had authorized the taping of the tape recorder to the back of Vick under the supervision of the FBI Agents and that he had later listened to the tape recording obtained himself.

12. The Court erred in refusing to grant the defendant an examination of the witness Frank Gray, Jr. on voir dire and in the absence of the jury, before permitting said witness to testify in the presence of the jury, thereby preventing the defendant from having an opportunity to show, without prejudice to his case before the jury, that the testimony of the witness Gray was entirely irrelevant, incompetent and immaterial and not in proper rebuttal.

13. The Court erred in refusing to grant the defendant an examination of the witness Frank Gray, Jr. on voir dire and in the absence of the jury, before permitting said witness to testify in the presence of the jury, thereby permitting the witness Gray to volunteer testimony not responsive to questions addressed to him whereby the defendant's attorney was hampered in and deprived of a reasonable opportunity to keep the record on trial of the defendant free from extraneous, prejudicial and inflammatory matter.

14. The Court erred in permitting the witness District Judge William E. Miller to testify, over the objection of the defendant, that he authorized tape recordings on the basis of an affidavit of Robert D. Vick, again denying examination on voir dire in the absence of the jury, whereby said witness was permitted to make irresponsive answers to questions, volunteering irrelevant, immaterial and incompetent testimony of a highly prejudicial and inflammatory nature to the effect that the affidavit "reflected seriously upon a member of the bar of this Court" and that he "decided that some action had to be taken" to determine whether the information "was true or whether it was false" and "it was the most serious problem that



*Motion for a New Trial*

I have had to deal with since I have been on the bench"; that he "could not sweep it under the rug"; that his allowance of the use of a tape recorder "would either clear this man or would prove that he was guilty"; that the tape recorder was used under "proper surveillance, supervision, to see that it was not faked in any way" and with "every precaution to determine that it was used in a fair manner; in order that he be able "to determine what the truth was"; that he had subsequently heard the tape recording himself.

15. The Court erred in permitting the reading of the affidavit of Robert D. Vick dated November 8, 1963, over the objection of the defendant, in the presence of the jury and the passing of the affidavit made government's exhibit #17 to the jury in order that they might reread the affidavit.

16. The Court erred in overruling and disallowing the defendant's motion to strike the testimony of Judge Gray and Judge Miller and to disregard their testimony.

17. The evidence, as a matter of law, demonstrates the entrapment of the defendant and there was no substantial credible evidence from which the jury could have found that the defendant was not entitled to rely upon the defense of entrapment.

18. All the evidence was to the effect that the defendant had not violated 18 U.S.C. Sec. 1505 as in the indictment alleged.

19. The Court should in the interest of justice grant a new trial.

Respectfully submitted,

**JACK NORMAN, SR.**

Attorney for Defendant

The defendant attaches a memorandum in support of this Motion for a New Trial and requests an oral hearing. Copy of the motion and memorandum in support have been served on opposing counsel, delivering the same to Hon-



***Order Overruling Motion for a New Trial***

orable John J. Hooker, Sr., Special Assistant to the Attorney General, at his office in the Nashville Trust Building, Nashville 3, Tennessee. This — day of June, 1964.

**JACK NORMAN, SR.**

**Attorney for Defendant**

***Order Overruling Motion for a New Trial***

**UNITED STATES DISTRICT COURT**

**For the Middle District of Tennessee**

**Nashville Division**

**UNITED STATES OF AMERICA**

**vs.**

**Z. T. OSBORN, JR.**

**June 19, 1964**

**No. 13484**

**Nash. Crim.**

This cause came on to be heard before the Court upon the defendant's motion for a new trial, the United States being represented by James Neal and John J. Hooker, Sr., Special Attorneys, and the defendant Z. T. Osborn being present with his attorney Jack Norman, Sr.

Thereupon the attorney for the defendant stated to the Court that he did not desire to make oral argument on the motion, and the attorneys for the Government stated they did not care to make oral argument. After due consideration, the Court is of the opinion that the motion is not well taken. It is therefore ORDERED that the defendant's motion for a new trial, be, and the same is hereby denied.

**ENTER:**

**MARION S. BOYD**

**United States District Judge**

**(Sitting by Designation)**

*Notice of Appeal*

Attest: A True Copy  
ANDREW H. MIZELL, Clerk  
U. S. District Court  
Middle District of Tennessee  
By GUY W. COOPER, D.C.

*Notice of Appeal*

In The  
DISTRICT COURT OF THE UNITED STATES

For the Middle District of Tennessee

Nashville Division

UNITED STATES OF AMERICA

vs.

Z. T. OSBORN, JR.

Criminal

No. 13,484

**NOTICE OF APPEAL**

1. The title of the defendant's case is United States of America vs. Z. T. Osborn, Jr., as above styled and numbered.

2. The name and address of the appellant is Z. T. Osborn, Jr., 4001 Wayland Drive, Nashville 12, Tennessee. The appellant's office address is 330 Stahlman Building, Nashville 3, Tennessee, Zip Code 37201.

3. The name and address of appellant's attorney is Jack Norman, Sr., 213 Third Avenue, North, Nashville 3, Tennessee.

4. The offense with which appellant was charged and convicted was an alleged violation of 18 U.S.C. Section 1503 in that appellant requested and counseled one Robert D. Vick to contact one Ralph A. Elliott, a juror, in a corrupt endeavor to influence the due administration of justice in

**Notice of Appeal**

the trial of a case, United States of America vs. James R. Hoffa, et al. The jurors' verdict of guilty was returned May 29, 1964. A motion for a new trial was filed within the time allowed and said motion was, by the Trial Court, overruled on June 19, 1964. On that same date, after overruling the motion for a new trial, the Trial Judge imposed a sentence of three and one-half (3½) years confinement and a fine of Five Thousand Dollars (\$5,000) on appellant.

5. Appellant was admitted to bond, Two Thousand Five Hundred Dollars (\$2,500) for his appearance and Five Thousand Dollars (\$5,000) for his payment of the fine imposed and appellant is not in custody.

6. Appellant hereby appeals from the judgment, sentence and fine from the United States District Court for the Middle District of Tennessee to the United States Court of Appeals for the Sixth Circuit.

This 22nd day of June, 1964.

**Z. T. OSBORN, JR.**  
**330 Stahlman Building**  
**Nashville 3, Tennessee**  
**Appellant**

**Copies are furnished for use of the Clerk in compliance with Rule 17, PRCP.**

*Designation of Record*

*Designation of Record to be Printed as Appendix*

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

**UNITED STATES OF AMERICA**

**vs.**

**Z. T. OSBORN, JR.**

**No. 16,056**

**DESIGNATION OF RECORD**

**To Be Printed as Appendix on Appeal**

1. Clerk's Docket Entries
2. The Indictment
3. Motion to Dismiss Indictment because the Grand Jury was Improperly and Illegally Impanelled
4. Exhibits to Motion to Dismiss Indictment as follows:
  - (a) Affidavits of Clerk and Jury Commissioner
  - (b) Letter used by Clerk and Jury Commissioner in correspondence with Suggesters
  - (c) List of Suggesters used by Clerk
  - (d) List of Suggesters used by Jury Commissioner
  - (e) Analysis showing Categories (Postmaster, Banker, etc.) of Suggesters
  - (f) Grand Jury Panel
  - (g) Analysis of Grand Jury Panel; Race, Religion and Employment
  - (h) Race, Religion, Employment of Grand Jury
  - (i) Affidavits of Ziegler, MacMackin and Polk as to Interviews with Suggesters
5. Excerpts from Exhibit H to Motion to Dismiss Indictment (Adverse Publicity) as follows:
  - (1) Nashville Banner "Extra" Edition of November 20, 1963:



*Designation of Record*

- (a) The 8 column headline through "Extra", page 1
- (b) Page 1, Columns 7 and 8, lines 1 through 37 of story "By Craig Ellis and Brad Carlisle."
- (2) Nashville Tennessean, November 21, 1963:
  - (a) The 8 column headlines and sub-headlines of the lead story, Page 1, Columns 5-6
  - (b) The lead story, by Nellie Kenyon, Page 1, Columns 5-6, Lines 1 through 46
  - (c) Story headline, Page 1, Columns 2-3-4, "Court 'Convinced' Attorney Guilty"
  - (d) Headline over Pictures of District Judges Miller and Gray, Page 1, Columns 3-4-5, "Court Mince No Words"
  - (e) Caption under Picture of Defendant, Page 1, Columns 7-8, "Z. T. Osborn, Jr." "Can't Be Found for Comment" "\$5,000 Now ... \$5,000 later" "Two Others With Him ..."
  - (f) Page 2, Story Continuation Headline "Z. T. Osborn Jr. Disbarred For Bribe Attempt", all of paragraphs 1 through 5, Column 4, Page 2, commencing "The Opinion Continued" and concluding ... "He said ... Osborn made no effort to cancel the agreement".
  - (g) Headline Page 4 over 8 column continuation of full text of disbarment opinion by Judge Miller, full text of story
- (3) Nashville Banner, November 21, 1963:
  - (a) Page 1 headlines; sub-headlines over Columns 1-5, 7, 8 of the lead story, paragraphs 1 through 12 (Column 7, 8, Page 1) and of story continuation, Columns 1, 2, Page 2, paragraphs 1 through 6
  - (b) Headline, Page 13, "Transcript of Contact Between Osborn, Vick", full text of transcript

*Designation of Record*

- (c) Page 6, Lead Editorial, Paragraphs 1 and 2; the concluding paragraph
- (d) Page 4, Headline "Full Text of Judge Miller's Memorandum"; paragraphs 7, 8, 9, 10 and 11
- (4) Nashville Tennessean, November 22, 1963:
  - (a) Page 1 Headlines and Columns 7, 8, Sub-Headlines; Paragraphs 1 and 2 of Columns 7, 8, Lead Story "By Nellie Kenyon"
  - (b) Page 10, Headline Columns 1 through 5, "Story Conflicts Bring Expulsion of Attorney" and Columns 4 and 5, the concluding six paragraphs of the story, commencing "In the conclusion he listed in his memorandum on the disbarment proceedings, Miller said in part . . ." and ending "the removal of his name from the roll of attorneys permitted to practice law in this Court."
  - (c) Page 22, Lead Editorial Headlines, and of the editorial itself paragraphs 1 through 4, Column 1, and paragraphs 2 and 5 of Column 2
- (5) Nashville Banner, November 22, 1963, "Extra" (Assassination of President Kennedy)
  - (a) From Page 1, Columns 1 through 4, Headlines, "Vick 'Admits' He Tried To Fix '62 Hoffa Juror"
  - (b) From Page 1, Column 4, Story Headline and First Paragraph of Story "Jury Probe of Osborn Set" Giving Names and Addresses of all Grand Jurors; Text
  - (c) From Page 1, Columns 5 and 6, Story Headlines and First Two Paragraphs of Story "Court Told Hoffa Not Involved"
  - (d) From Page 8, Headlines Over Partial Transcript of Interview of Vick by Special Prose-

*Designation of Record*

- editor John J. Hooker, Sr. and Lines 8 through 40, Columns 3-4
- (6) From the Nashville Tennessean, November 23, 1963, Page 24, Columns 1 and 2, the Story Headline "Jury Tampering Hearing Set" and the first 6 paragraphs of the story
  - (7) From the Nashville Banner, November 22, 1963, Page 1, Column 2, Story Headline "Jury Meets Monday On 'Tampering'"
  - (8) Nashville Banner, November 27, 1963, Page 1, Columns 1-2, Story Headline and Paragraph 6 of Story (In Column 2)
  - (9) Nashville Tennessean, November 27, 1963, Page 1, Column 1, Story "Bar to Weigh Osborn's Case" Heading and Paragraph 5 of the Story
  - (10) Nashville Banner, November 30, 1963, Page 1, 8 Column Headline "U. S. Jury Security Ordered" and Lead Story Heading; Lines 1 through 57 (8 Paragraphs) of Column 8
  - (11) Nashville Tennessean, December 1, 1963, Page 1, Column 3, Story "Vick To Talk . . ." through "... persons away from eighth."
  - (12) Nashville Tennessean, December 2, 1963, Page 1, Column 3, Story "Osborn Case" heading and first 4 Paragraphs of Story; Page 19, Continuation of Story "Osborn Case", Column 4, All Full Paragraphs
  - (13) Nashville Tennessean, December 5, 1963:
    - (a) Page 1, 2 Column Headline, Columns 7 and 8; Sub-Headlines and First 2 Paragraphs of Story "By Nellie Kenyon"
    - (b) Column 8, Page 1, Story Heading "Tamper Jury Broadens Quiz"

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- (c) Columns 5, 6, 7 and 8, Page 1, Story Heading  
"Text of Court Order Denying Osborn's Re-  
hearing: 'No . . . Ground For Relief . . .'"
- (14) Nashville Tennessean, Friday, December 6, 1963;  
Editorial Heading, Page 28, "Federal Judges In-  
spire Trust"
- (15) Nashville Tennessean, December 7, 1963; Page 1,  
8 Column Headline "U. S. Jury Indicts Osborn"
6. Motion To Suppress Evidence Illegally Obtained
7. Transcripts of Proceedings Before Honorable Marion  
S. Boyd, District Judge, April 15, 1964, on Motion to  
Dismiss Indictment and Motion to Suppress: (Show  
Appearances)  
Page 3, Lines 2 through 25; Page 4, Lines 1 through  
25; Page 5, Lines 1 through 25; Page 6, Lines 1 through  
25; Page 7, Lines 1 through 25; Page 9, Lines 9 through  
25; Page 10, Lines 1 through 22; Page 11, Lines 7  
through 25; Page 12, Lines 17 through 25; Page 13,  
Lines 1 through 9; Page 14, Lines 6 through 21; Page  
15, Lines 2 through 20; Page 18, Lines 24 and 25;  
Page 19, Lines 1 through 13; Page 21, Lines 1 through  
25; Page 22, Lines 1 through 9; Page 41, Lines 16  
through 25; Page 42, Lines 1 through 25; Page 43,  
Lines 1 through; 9 Page 66, Lines 9 through 25; Page  
67, Lines 1 through 16; Page 69, Lines 7 through 22;
8. Transcript of Proceeding in Absence of Jury Before  
Honorable Marion S. Boyd, May 25, 1964, on Motion  
to Suppress Evidence and to Exclude Defendant's  
Statement of November 19, 1963:
- (a) Testimony of Robert D. Vick; Transcript, Page  
170, Lines 7 through 26; Page 171, Lines 2 through  
23; Page 173, Lines 10 through 25; Page 174,  
Lines 2 through 25; Page 175, Lines 2 through 20;  
Page 176, Lines 3 through 25; Page 177, Lines 2  
through 25; Page 178, Lines 2 through 25; Page



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179, Lines 2 through 25; Page 180, Lines 2 through 25; Page 181, Lines 2 through 12; Page 182, Lines 17 through 25; Page 182, Lines 2 through 5; Page 186, Lines 3 through 25; Page 187, Lines 2 through 25; Page 188, Lines 2 through 25; Page 189, Lines 2 through 4; Page 189, Line 25; Page 190, Lines 2 through 4; Page 191, Lines 6 through 18; Page 192, Lines 2 through 25; Page 193, Lines 2 through 8; all of Pages 200, 201, 202

(b) Testimony of D. L. Lansden; Transcript, Page 206, Lines 1 through 25; Page 207, Lines 20 through 24; Page 208, Lines 2 through 25; Page 209, Lines 2 through 25; Page 210, Lines 2 through 25; Page 211, Lines 2 through 9

(c) Testimony of W. Raymond Denney; Transcript, Page 214, Lines 1 through 25; Page 215, Lines 1 through 25; Page 216, Lines 2 through 25; Page 217, Lines 2 through 25; Page 218, Lines 2 through 24

(d) Testimony of John J. Hooker; Transcript, Page 225, Lines 10 through 25; Page 226, Lines 2 through 22

(e) Testimony of James Neal, on Cross-Examination; Transcript, Page 232, Lines 2 through 17

9. Ruling of Court on Motion to Suppress; Transcript, Page 241, Lines 14 through 25; Page 242, Lines 2 through 20.

10. Transcript of Proceedings at Trial before Marion S. Boyd, Judge, and a Jury, May 25 through May 29, 1964

11. Dismissal of Indictment, Count 3; Transcript, Page 63, Lines 6 through 16;

Of the testimony of Guy W. Cooper; Transcript, Page 72, Lines 1 through 12; Page 81, Lines 2 through 11;

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Page 82, Lines 16 through 25; Page 83, Lines 2 through 24; Page 85, Lines 11 through 21

Of the Testimony of Mrs. Rosemary Hotchkin; Transcript, Page 87, Lines 1 through 25; Page 88, Lines 1 through 25; Page 91, Lines 16 through 25; Page 94, Lines 7 through 24; Page 102, Lines 2 through 21

Of the Testimony of Walter J. Sheridan; Transcript, Pages 104, 105, 106, 107, 108, 109, 110, 111, 112, and of Page 113, Lines 1 through 15

Of the Testimony of Opal Smith; Transcript, Page 156, Lines 5 through 11; Page 157, Lines 3 through 11; 16 through 24; Page 158, Lines 17 through 25; Pages 159, 160, 161, 162, 163; Page 166, Lines 12 through 22

Of the Testimony of Guy W. Cooper, recalled; Transcript, Page 246, Lines 17 through 25; Page 247, Lines 1 through 24

Of the Testimony of William L. Sheets; Transcript, Pages 250, 251, 252, 253, 254, Page 255, Lines 1 through 19; Page 256, Lines 6 through 25; Page 257, Lines 1 through 23; Page 258, Lines 6 through 15; Page 259, Lines 3 through 20; Page 260, Lines 6 through 25; Page 261, Lines 2 through 24; Page 244, Lines 14 through 25; Pages 265, 266, 267, 268;

*On Cross-Examination*

Transcript, Page 272, Lines 20 through 25; Page 273 through Page 278; Page 279, Lines 2 through 20

Of the Testimony of Robert D. Vick; Transcript, Page 294, Lines 11-13; 24, 25; Pages 295 through 300; of Page 305, Lines 13 through 25; Pages 306 through 334; of Page 335, Lines 2 through 13

*On Cross-Examination*

Transcript, Pages 336 through 377; of Page 378, Lines 2 through 19; of Page 386, Lines 14 through 25; Pages 387 through 499; Page 500; of Page 509, Lines 5

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through 25; Pages 510 through 548; and on re-direct, Pages 548 through 559

Of the Testimony of Edward T. Steele; Transcript, Pages 560 through 568

Of the Testimony of Walter J. Sheridan, recalled; Transcript, Pages 571 through 577

Of the Testimony of Opal Smith, recalled; Transcript, Pages 579 through 583; of Page 584, Lines 2 through 28

Of the Testimony of John E. Hamlin; Transcript, Page 586; Page 589; of Page 591, Lines 4 through 18; of Page 592, Lines 7 through 25; of Page 596, Lines 1 through 15

Of the presentation of Government's Exhibits 13, 14 and 15; Transcript, Pages 594 through 687

The defendant's Motion for Judgment of Acquittal; Transcript, Pages 696, 697

Of the Testimony of the Defendant, Z. T. Osborn, Jr.; Transcript, Pages 698 through 924; of Page 825, Lines 2 through 20; of Page 826, Lines 17 through 25; Pages 827 through 895

Of the Testimony of Sam Wallace; Transcript, Pages 896 through 910

Of the Testimony of Jean Reeves; Transcript, Pages 911 through 915

Of the Testimony of Frank William Muller; Transcript, Pages 917 through 926, Line 15

Of the Testimony of James R. King; Transcript, Page 937, Lines 20 through 25; Pages 938, 939, 940, 941, Lines 1 through 5

Of the Testimony of Charles Galbreath; Transcript, Pages 941 A, Lines 8 through 25; Page 942; Page 943

Of the Testimony of Ezell Williams; Transcript, Pages 944, 945; of Page 946, Lines 1 through 7

Of the Testimony of Joseph Ralph Staten; Transcript, Pages 948, 949, 950

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Of the Testimony of Carl William Stewart; Transcript, Pages 951, 952

Of the Testimony of Foster Douglas Williams; Transcript, Page 955; of Page 956, Lines 2 through 22

Of the Testimony of Jack Whee; Transcript, Pages 979, 980

Of the Testimony of Maclin P. Davis, Jr.; Transcript, Page 981, and of Page 982, Lines 2 through 17

Of the Testimony of Carlton Loser; Transcript, Pages 983, 984

Of the Testimony of James Sisco; Transcript, Page 985; and of Page 986, Lines 2 through 8

Of the Testimony of L. Kenneth Johnson; Transcript, Page 987; and of Page 988, Lines 2 through 12

Of the Testimony of Jessie T. Moore; Transcript, Pages 989, 990, 991

Of the Testimony of John Paschall Davis; Transcript, Pages 992, 993

Of the Testimony of Samuel Felts, Jr.; Transcript, Pages 994 and 995

Of the Testimony of Elkin Garfinkle; Transcript, Pages 996 and 997

Of the Testimony of Mac E. Robinson; Transcript, Pages 998, 999, 1000; and of Page 1001, Lines 1 through 13

Of the Testimony of Shirley Green; Transcript, Pages 1004 through 1023

Of the Testimony of Laran W. Robbins; Transcript, Pages 1024 through 1032

With respect to the tender of a tape recording of a meeting between Robert D. Vick and others in Louis-



*Designation of Record*

ville, Kentucky; of the Transcript, Pages 1033 through 1039

Of the Government's Proof in Rebuttal, the Testimony of Judge Frank Gray, Jr.; Transcript, Pages 1054 through 1064

Of the Testimony of Judge William E. Miller; Transcript, of Page 1065, Lines 9 through 25; Pages 1066 through 1967; of Page 1068, Lines 1 through 12

With respect to the Defendant's Motion to strike the Testimony of Judges Gray and Miller, and the renewal of the Defendant's Motion for Judgment of Acquittal; Transcript, Page 1068, Lines 18 through 20; of Page 1069, Lines 5 through 25; Page 1070; Page 1071, Lines 1 and 2

Of the further proceedings with respect to the Affidavit of Robert D. Vick dated November 8, 1963, Government Exhibit No. 17; of Transcript, Page 1076, Lines 9 through 25; of Page 1077, Lines 1 through 24; of Page 1078, Lines 1 through 22

Of the Summations on Behalf of the Government:

By Mr. James Neal: Transcript, Page 1088, Lines 7 through 25; Page 1089, Lines 1 through 25; Page 1090; Page 1092, Lines 1 through 3; Pages 1096, 1097, 1098, 1099; Page 1099, Lines 1 through 24

By Mr. John J. Hooker: Transcript, Pages 1171 through 1182; Page 1188, Lines 3 through 25; Pages 1189 through 1204

The Charge of the Court and Proceedings; Transcript, Vol. VII, Pages 1206 through 1273

12. Exhibits to Testimony of Edward T. Steele, referred to at Pages 560-568 of the Transcript, Defendant's Collective Exhibit No. 3
13. Government Exhibit Number 12; Transcript of tape recorded conversation of November 11, 1963
14. Motion For a New Trial

*Designation of Record*

15. Order Overruling Motion For a New Trial
16. Notice of Appeal
17. This Designation of Record to be Printed on Appeal

**JACK NORMAN, SR.**  
Attorney for Appellant  
213 Third Avenue North  
Nashville 3, Tennessee

**CERTIFICATE OF SERVICE**

I certify that copies of the foregoing Designation were served on opposing counsel by mailing copies to each John J. Hooker, Esquire, Nashville Bank & Trust Building, Nashville 3, Tennessee; James Neal, Esquire, United States Department of Justice, Washington 25, D. C.; and Honorable Kenneth Harwell, United States Attorney, United States Courthouse, 801 Broad Street, Nashville 3, Tennessee, this 3rd day of August, 1964.

**JACK NORMAN, SR.**

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**In the United States Court of Appeals  
for the Sixth Circuit**

**No. 16056**

**UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE**

**v.**

**Z. T. OSBORN, JR., DEFENDANT-APPELLANT**

**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES  
FOR THE MIDDLE DISTRICT OF TENNESSEE**

**APPELLEE'S APPENDIX**

**PROCEEDINGS ON MOTION TO DISMISS INDICTMENT**

**Hearing transcript p. 29 (supplementary to p. 125a  
appellant's appendix)**

[29] (Mr. Neal) Now, the second thing relied upon by the defendant is an analysis of the 100-member panel drawn from the box, an analysis of their occupation, race, sex, and so forth.

The first thing to be said about that, it seems to me, your Honor, is this: There is no necessary relation between the list of 100 and their occupation and so forth and the full composition of the box which is admittedly—but it is not raised in issue—more than 300. But, even if there were some necessary relation between the two, that would not be significant because the Supreme Court has held time and time

(1b)

*Proceedings on Motion to Dismiss Indictment*

again in cases cited by the defendant—*Thiel v. Southern Pacific*, *Ballard v. United States*, and *Glasser v. United States*—that the defendant has no right on a particular jury or a particular jury panel to a representation of all groups in the community, much less a proportional representation. It's the system; not what the accidental results are in a particular case.

But, even aside from that, your Honor, if your Honor will review the analysis as supplemented this morning by the details as your Honor called it, which we submitted as Exhibit 2 I believe, your Honor will see this, that to the extent that the analysis purports to show anything, it shows a remarkable cross section of the community.

[30] I would like to point out to your Honor what we get from an analysis of the 100-member panel. On this, we have used partly the analysis submitted by the defendant and partly the detailed investigative report that we submitted this morning.

There were four Negroes on the list of 100. They are numbers 83, 92, 100, 88.

There were two men with known union affiliation past or present—Number 61 and Number 38.

There were numerous instances according to their own investigation—I would say close to one half—in which past or present union affiliation was not known.

Your Honor will see that there apparently was a mistake made in the statistical analysis submitted by the defendant in that they show a great deal of certainty about union affiliation or the lack thereof when their underlying investigative report discloses nothing in that regard—unknown. So there are numerous

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instances where union affiliation was unknown, but there were at least two union people.

There were two Catholics—Numbers 56 and 93.

There was one member of the Jewish faith—Number 68.

There were numerous blue-collar workers, wage earners, laborers—whatever you call it.

[31] For example, Juror No. 77 was a retired steel worker, No. 47 was an auto mechanic, No. 83 was a retired railroad worker, No. 99 was a factory worker, No. 90 was a cook, No. 61 was a retired factory worker, No. 76 was a factory worker, No. 40 was an equipment operator, No. 38 was a retired railroad engineer, No. 50 was a shipping clerk, No. 60 was a retired railroad employee, No. 31 was a retired factory guard, No. 70 was a carpenter, No. 3 was a barber, No. 72 was a retired railroad engineer, No. 2 was a janitor.

Now, here on the defendant's analysis, it shows a farmer, but if you will go to the details, it says that he is a janitor who lives on a 20-acre farm.

No. 47 was an auto mechanic, No. 62 was a factory worker at a bicycle plant, No. 92 was a part-time preacher and caretaker of a state park.

So you have nineteen or twenty out of the one hundred who would be clearly called laborers, wage earners, et cetera.

You have 21 farmers, but certainly that is not surprising out of 100 in the Middle District of Tennessee. It might not be surprising out of the Western District of Tennessee.

You have six or seven or eight housewives.



*Proceedings on Motion to Dismiss Indictment*

We contend that, to the extent, therefore, that [32] the investigation of the 100-member panel shows anything at all, it tends to show clearly that there was no systematic exclusion, that there was representation from every group, and almost equally as clearly that the system was reasonably calculated to produce a fair cross section of the community.

So, on those three issues, your Honor, it seems to me that the moving papers show contrary to what the defendant contends. They show substantial compliance, they show a system reasonably calculated to produce a fair cross-section of the community, and they show clearly that there was no systematic exclusion of any cohesive group.

Briefly, with respect to the affidavits of Ziegler, Polk, and McMacklin, these affidavits—taken on their face—are broad, sweeping generalizations, but when your Honor has read (and I am sure your Honor has read) the cross-examination, a completely different light is placed upon these affidavits.

For example, they interviewed some 39 of the more than 100 suggesters, and while all of them seemed to contend that there was a systematic exclusion of Negroes, listen to what they admitted on cross-examination:

McMackin says that they told him of statements indicating prejudice against Negroes, yet he admitted on cross-examination that of the 12 that he interviewed who remembered whether or not they returned Negroes—some of [33] them did not remember—but of the 12 who remembered, nine stated to him that they returned the names of one or more Negroes on their

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list. And yet the purport of his affidavit, looking at it on its face, is that there was exclusion of Negroes.

Three said they did not return the names of Negroes.

Mr. Zeigler, in his affidavit, while he also includes a statement that he would conclude indicates prejudice against Negroes, he admits that he interviewed 18 suggesters, that six stated they returned the names of one or more Negroes on their list, that six said that they did not, and that of the remaining six, some said they thought they did, and some did not remember.

What it boils down to is that, while these people seem to conclude a discrimination against Negroes, more than half of them said that they returned the names of Negroes. And, significant, your Honor, these suggesters were not suggesters residing in Davidson County; and your Honor will see by an analysis of the 1960 Census—the table we submitted—that most of the Negroes residing in the Middle District of Tennessee live in Davidson County. Only about five or six percent of the Negro population over 21 in the Middle District of Tennessee is outside Davidson County. So more than half the suggesters they interviewed living [34] outside Davidson County returned the names of Negroes where Negro population is very, very sparse.

It is agreed in this record, I believe, that as far as Davidson County is concerned, where the most of the Negroes live, Negro suggesters were relied upon to furnish the names.

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Clearly there could be no systematic exclusion, and it is reasonably calculated to produce a fair cross section of the community.

The other aspects of the affidavit are, I think, if taken on their face, equally misleading. All of the suggesters told McMackin, Zeigler, and Polk that they tried to follow the directions of the clerk and to secure a fair cross section, that they did not discriminate, and so forth. I could go on with that, but I think the cross-examination that your Honor has will show that.

So we think that, with respect to all of the issues, there was substantial compliance, that there was no systematic exclusion, and that the system was reasonably calculated to produce a fair cross section of the community.

The Court. Gentlemen, we have had a full hearing today on this motion by the defendant to dismiss the indictment on the grounds that the grand jury was improperly and illegally impaneled.

The Court as already observed has had the benefit of your excellent briefs on the subject and has made good use of them, I hope. So these are the Court's brief views about this whole matter:

It should be stated in the outset that Judge Miller's opinion in which he dealt with similar questions to those raised on this motion concerning the selection and the impaneling of juries in this judicial district seems to the Court a complete answer to most of the

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questions here raised. Judge Miller, it appears, however, did not deal with any question concerning possible prejudice which might have accrued from newspaper and other publicity and the alleged obligation of the trial judge to interrogate members of the grand jury concerning any bias or prejudice which might have emanated from such publicity.

Regarding the alleged failure of the Court to inquire on voir dire of the grand jurors concerning possible prejudice from publicity, Judge Gray who is one of the judges in this district, in impaneling this particular grand jury at the beginning of the court term, did (it seems) inquire rather fully regarding any bias or prejudice for any reason and did, in fact, instruct the grand jurors that publicity was not to be considered by grand jurors for any purpose in their consideration of any indictment which might come before that body during its term of service. This, in the light of the authorities, would seem to be quite adequate.

It is significant, too, that the oath administered to the grand jurors, among other things, covered their responsibility to be fair in their deliberations.

The District Attorney, Mr. Harwell, it develops today in this proceeding, also cautioned the grand jurors concerning publicity on the morning they began their deliberations in this particular case. Concerning the publicity angle of the matter, his remarks as read to the Court this morning seem very appropriate and did serve as a reminder to the grand jurors



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of the things Judge Gray had cautioned them about at the time of his original instructions.

Of course, Judge Gray (as the Court recalls) also passed upon the selection and the organization of the original panel and this particular grand jury with regard to the use of so-called selectors and with regard also to the exclusion of certain classes such as Negroes and Jews. He ruled, among other things, that there was no delegation of authority, that the jurors were properly selected, and that the traditional cross-section formula was followed in its selection and composition as had Judge Miller ruled in connection with the selection of another jury panel, the one just prior to this one as the Court recalls now. This is a system which has been used in this district, it seems, for many years. The Court at least has that impression at this time. So both of the judges in the Middle District of Tennessee whose views should carry weight have already ruled that the procedures followed by the Clerk and the Jury Commissioner in question are not subject to the criticisms which form the basis of this motion to dismiss the indictment.

It should be stated also that Judge Frank Wilson of the Eastern District of Tennessee has ruled similarly on some of the questions here involved regarding this same venire and grand jury.

The Court is well satisfied on the record that there has been no systematic or intentional exclusion of anyone at all from jury service in the Middle District of Tennessee, particularly at the term here in

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question. As a matter of fact, the Court is impressed with what appears to be a good-faith effort—if it is material in this type of investigation—on the part of the Clerk and the Jury Commissioner to give all segments of the citizenship in this judicial district adequate representation in the selection of prospective jurors and in the impaneling of grand jurors.

Of course, the judge does not—if the Court recalls the procedure—name the grand jurors; they are the first 23 drawn from the jury box if I am not mistaken. The use of so-called selectors as an aid, which is all that it was when you get down to it, is an appropriate means in the Court's opinion to insure that the jury panel in the district will be truly representative of the citizenship.

The Clerk and the Commissioner—it should be said, however—in the last analysis (and Mr. Norman suggests at this time that maybe this is not exactly the facts of the matter, but is the Court's recollection) passed finally on the qualifications of all persons whose names went into the jury box. In other words, the Clerk and the Jury Commissioner did not accept at full face the recommendations made by these so-called selectors but, as I say, checked them, so to speak, before they went into the jury box.

The Courts (I might say) have approved this procedure in the Dow case among others including the Scales case cited here today.

The best the Court can tell, there has been no discrimination at all—directly or indirectly—against any

*Proceedings on Motion to Dismiss Indictment*

person or group within this judicial district in the selection of names which went into the jury box. The procedures followed by the officers of this court were reasonably calculated to produce a true cross section of the citizenship.

The Court is well satisfied that the selection of the jurors, including the grand jurors who returned the indictment in this case, was not biased or prejudiced or made from such groups of citizens as to be unfavorable to a fair and impartial consideration of the defendant's case.

The court officials, in this Court's opinion, have not violated Section 1861 of the statute or any other section of the statute in the impaneling of the jurors at this term of court in question. Certainly there was substantial compliance with the statute here. There, of course, is no "rule of thumb" or standard under the statute to be followed.

At the expense of possible repetition, the officials of the court in this district have neither adopted nor followed procedures which refused participation in or inclusion for jury duty any class or group within the district to the prejudice of anyone's rights; nor has anyone's rights, including this defendant's, been otherwise prejudiced as here contended. The defendant, in the Court's opinion, has not carried the burden of showing otherwise in regard to any matter here involved.

So it follows that the motion to quash or to dismiss the indictment is in all things overruled.

*Beard. Direct*

Gentlemen, in the Court's judgment there is no particular dispute concerning the facts. Counsel seem to agree with this from what has been said here today as the Court understands. It does seem to the Court that only matters of law are involved. In any event, what the Court has said will suffice as its findings and conclusions at least temporarily. If others in more detail are required, government counsel may propose them to the Court within the next few days. Defense counsel will have the same privilege, of course, if he so desires.

As I say, there appears to be no real dispute between you gentlemen as to how juries are drawn in this judicial district. It does seem to present, as I say, only questions of law; and if you can agree between yourselves that this motion presents only questions of law, of course, more formal findings will not be necessary and you need not concern yourselves further to propose them to the Court.

GOVERNMENT'S OPENING STATEMENT

**Trial transcript**

[66] Mr. NEAL. There was a third count in the indictment. The government will not rely on the third count in the indictment.

TESTIMONY OF HARRY BEARD

[116] Direct examination by Mr. HOOKER:

Q. State your full name, please, sir.



*Beard. Direct*

A. Harry Beard.

Q. Where do you live, Mr. Beard?

A. Lebanon, Tennessee.

Q. Where you formerly a member of the Bar of Lebanon, Wilson County—that is, a lawyer?

A. Yes, sir.

Q. Are you at the present time?

A. No, sir.

Q. Why not?

A. There has been an order put out revoking my license, sir.

Q. In the Federal Court?

[117] A. Yes, sir.

Q. And did you surrender your license in the State Court? Has there been an order on that?

A. No, sir.

Q. But there has been an order put down in the Federal Court?

A. Yes, sir.

Q. Prior to the commencement of the trial of the case of United States against James R. Hoffa, ordinarily known—and others—known as the Test Fleet case, did you have occasion to discuss that case with anybody?

A. Yes, sir.

Q. Who was it?

A. Mr. Vick. Mr. Ramsey.

Q. Is that Robert Vick and Fred Ramsey?

A. Yes, sir.

Q. And where was it that you discussed that case with them?

*Beard, Direct*

A. In my back yard, or back lawn.

Q. At Lebanon?

A. Yes, sir.

Q. And do you remember about when that was, Mr. Beard?

A. It was in the fall of '62. The weather was getting warm. It was probably mid-October.

[118] Q. Now, this was before the jury in the case had been selected?

A. Yes.

Q. Were you employed at that time by Mr. Ramsey and Mr. Vick to perform any services in connection with that case?

A. Yes.

Q. What were those services to be?

A. To investigate the background of the jurymen, the venire, the prospective jurymen. As I recall, there were about 17 people from Wilson County that was to come over and become the jury. And they first went to the sheriff of Wilson County, and he didn't want—he was too busy, and he directed them to me.

Q. And did you take those names and undertake to make an investigation of them?

A. I sure did.

Q. Were you paid for that service?

A. Yes, I was.

Q. How were you paid, by check or in cash?

A. I was paid in cash.

Q. And did you give a receipt for that?

*Beard. Direct*

A. I did.

Q. Now, then, among other names was the name of a Mrs. D. M. Harrison on that list?

[119] A. It was.

Q. Then after you made the investigation of those 17 names did you report that back to Ramsey and Vick?

A. Well, I filled out a questionnaire, a two-page questionnaire, and one of them came to my office and picked it up.

Q. I see. You filled out a questionnaire in writing disclosing the information that you had sought to learn, had learned, about these prospective jurors?

A. That is right.

Q. Do you know which one it was that came to pick it up, Mr. Ramsey or Mr. Vick?

A. No, I do not recall that.

Q. Then when was the next time you saw Mr. Ramsey or Mr. Vick, either or both of them?

A. Later on in a cafe up there at noon time, which was some time afterwards. I don't know just how long, but a short time.

Q. Well, on that occasion had the so-called Test Fleet case, involving James R. Hoffa, commenced in Nashville?

A. Yes.

Q. The trial was in progress?

A. Yes.

Q. And was there anybody on the jury in the James R. Hoffa case that was from Lebanon?

*Beard. Direct*

[120] A. Two from Wilson County, one from Lebanon, one from Watertown.

Q. What was the name of the one from Lebanon?

A. Mrs. David M. Harrison.

Q. What does her husband do?

A. He is a practicing attorney.

Q. He is a son of a former minister there in Lebanon?

A. Yes, and I might say a fine gentleman and a good lawyer.

Q. Yes. Now, you say this second conversation was in a cafe?

A. Yes.

Q. And who was present at that conversation?

A. Well, the cafe was filled with people. It was just an exchange of pleasantries, that was all.

Q. Did you have any conversation with either Mr. Vick or Mr. Ramsey, either or both of them, about the people that were on the jury?

A. Yes, on that occasion, or it might have been another occasion, they might have been just coming through Lebanon and I saw them in the cafe; but close to that occasion they came to the office and they were discussing Mrs. Harrison. They said she was an intelligent person and she occupied one of the front seats on the jury and they wanted to know more [121] about her, where she went to school and that sort of thing. I told them I didn't know that. Then they wanted to know the financial condition of the family. I said I didn't know that. Then they asked



*Beard. Direct*

me would I work with Mr. Harrison, representing the union on a land development deal. They wanted to know if I would work with Mr. Harrison on a scholarship for his son.

Well, I looked at that and I could see two sides of it. But then in the end they was talking, they said, "You go down and see Mr. Osborn," and I told them I would, and I did.

Q. Was that Mr. Z. T. Osborn?

A. Yes.

Q. The gentleman that's sitting here by Mr. Norman?

A. Yes.

Q. Did you go down to see him?

A. I did.

Q. And just tell these ladies and gentlemen of the jury what efforts you made to see him and where you saw him?

A. I went to his office down on Third Avenue. I always park my car near that vicinity. And he wasn't there. I went to the hotel and waited, but they were busy and I came back to his office and waited a few minutes, and he came in. He had never seen me to know me, and I had never seen him to know him, except my eight years in the Legislature, and I knew he was a prominent attorney, the Reapportionment Case and [122] that sort of thing. And we talked and exchanged pleasantries, and I told him that some of them on the jury would ruin him on the case, because some of the people were highly prejudicial one way or the other. He asked me did I know Mr. Harrison. I said

*Beard. Direct*

certainly. He asked if I knew Mrs. Harrison and I said certainly. He told me, "Will you see him?" Said, "If he will get an acquittal, get his wife to vote not guilty, I will give him \$10,000."

I said, "I will see about the situation." I was astounded and appalled.

Q. Was anyone else present when he told you that?

A. No, sir.

Q. Where did that take place?

A. In his office.

Q. You spoke a moment ago of eight years experience in the Legislature. Did you serve four times in the House of Representatives from Wilson County?

A. I did.

Q. Was anything else said? What was the last thing you said to him?

A. I said I would see about the situation. I didn't tell him whether I would or I wouldn't. I was appalled. He was a big fellow. I was a country fellow. He had had the Reapportionment Case. I was driving home and I knew I couldn't do this, [123] I wouldn't do this. And a day or two later I saw him a short time again and I told him the man I was to see was drinking and I didn't get to see him. Then he told me, said, "Well, there is a lot of people interested in Mr. Hoffa being acquitted. There's a whole lot of people." And he talked like that. And I left.

I thought, "Well, I will have to think up some other excuse to get out of this situation without getting killed."

*Beard. Direct*

**Mr. NORMAN.** Without getting what?  
**The WITNESS.** Without getting killed, without losing my life. So I——

**By Mr. HOOKER:**

**Q.** Before you leave that conversation, was there anything else said by you to Mr. Osborn or Mr. Osborn to you on that occasion?

**A.** No.

**Q.** That you recall?

**A.** All right. You left and went back to Lebanon?

**A.** That is right.

**Q.** And what took place next?

**A.** I thought I would just raise the ante from \$10,000 to \$50,000, some big figure that they wouldn't submit to and that would be the end of it. And I came back and told him.

[124] **Q.** What did you tell him?

**A.** I said he wouldn't do that, they wanted more money, wanted \$50,000. He said, "I will have to see Mr. Hoffa." I said, "All right."

**Q.** Did you see him any more after that?

**A.** Yes, I did.

**Q.** Where did you see him the next time?

**A.** It was just a short time, just two or three days, not long.

**Q.** Did you come back to his office in Nashville?

**A.** I did.

**Q.** And what was said on that occasion?

**A.** He said—I walked in, I could tell he had a sort of scowl on his face. He wasn't too happy. Of

*Beard. Direct*

course, that seemed to me. He said they wouldn't do that, Mr. Hoffa wouldn't do that.

I said, "Fine. Forget it." That was in December, about Christmas time. And I left. And one reason I didn't want to disclose it to the court, I just didn't want to get myself killed, or my family killed, because these things have happened over the country. And later on I noticed there was a widespread pogrom.

Q. Well, did all of those conversations that you had with Mr. Osborn occur in Nashville, in Davidson County?

A. Yes.

[125] Q. And were they all, the conversations that you had with Mr. Osborn, during the time that the so-called Test Fleet Case against Mr. James R. Hoffa and others was pending and on trial in Judge William E. Miller's court here in Nashville?

A. Yes, sir.

Q. And that was the last conversation you had about it?

A. Yes.

Q. Then when you were cited to appear here to show cause why you should not be disbarred, did you testify in that?

A. I did.

Q. And did you also testify before the Grand Jury here in the Federal Court?

A. I did.

\* \* \* \* \*

(Supplemental to p. 1702, appellant's appendix)

[193] Q. Now, then, have you been paid anything



*Vick. Direct*

**TESTIMONY OF ROBERT D. VICK**

**Direct examination by Mr. NORMAN:**

(Supplementary to p. 131a, appellant's appendix)

[175] Q. Did you pretend to him that the Juror Elliott was related to you?

A. Yes, sir.

Q. When did you decide—was he related to you?

A. Yes, sir.

Q. The Juror Elliott was related to you?

A. Remotely, yes, sir.

Q. What was the relationship?

[176] A. I believe it is about a second cousin, Mr. Norman.

Q. Had you discussed your relationship, which you think was a second cousin, with the Juror Elliott, with anybody connected with the United States Government, and particularly the Department of Justice, before October when you discussed it with Mr. Osborn?

A. No, sir, I am sure I hadn't, Mr. Norman.

[190] Q. You mean, sir, that in the meetings that you had with Osborn after you talked to Sheridan over the phone— [191] you planned each one of them, did you not?

A. With Mr. Osborn.

Q. Well, did you plan them with anybody else?

A. No, sir.

(Supplementary to p. 170a, appellant's appendix)

[193] Q. Now, then, have you been paid anything

*Vick. Cross*

directly or indirectly by the Government, the Department of Justice in particular, for any work that you have done in connection with this case in any way, shape, form or fashion, directly or indirectly, to you or to your family?

A. Now, that is a pretty long question, Mr. Norman.

Q. Well, it is pretty clear.

A. I haven't received any money from the United States Government. Now——

Q. Who have you received money from?

A. From anybody that is connected with the United States Government.

Q. I mean, for doing this work. Who have you received [194] money from?

A. Nobody has paid me anything, Mr. Norman.

Q. As I understand, you——

A. Except the Nashville Police Department paid me my salary.

Cross-examination by Mr. NEAL:

[197] Q. Now, on the evening before, you called Mr. Walter Sheridan in Washington, D.C., is that correct?

A. That is correct.

Q. And at that time you reported to him a conversation you had had with Mr. Osborn on that very day, November 7, is that correct?

A. That is correct.

Q. Now, in this conversation on November 7—prior to this conversation of November 7, did you ever make any suggestion to Mr. Osborn in any shape, form or fashion that you contact a juror?

*Vick. Cross*

A. No, sir.

Q. None whatever?

A. No, sir.

Q. All right. In this conversation did you tell Mr. Osborn that you had a cousin on the prospective Hoffa jury panel?

A. Yes, sir, I did.

Q. Did you tell him his name?

A. Yes, sir.

Q. His name was Mr. Ralph A. Elliott?

A. Yes, correct.

Q. At this time did he ask you to go talk to Elliott to [198] get him on your side?

A. Yes, sir.

Q. He wanted him on the jury?

A. Yes, sir, he did.

Q. To sit down with him and talk to him or get him on the jury—or go contact him right away, sit down, talk to him, get him on our side, we want him on the jury?

A. Yes, sir, that is correct.

Q. Was that the subject of the conversation?

A. Yes, sir.

Q. You did not initiate that conversation whatsoever?

A. No, sir.

Q. Was that the conversation you reported to Mr. Sheridan?

A. Yes, sir.

Q. Now, you had talked to Mr. Sheridan prior to this time, had you not?

Vick. Cross

A. Yes, sir, I had.

Q. Had Mr. Sheridan ever asked you to do anything except your duties as a citizen to report any illegal activities you might learn of?

A. No, sir, he had not.

Q. Did he ever specifically tell you that he was not interested in any other information you might learn other than illegal activities?

A. Yes, he did.

[199] Q. Who else, now, taking through November 8, 1963, when you signed this affidavit—did you ever talk to Mr. John Hooker, Sr., about this matter?

A. Prior to this date, Mr. Neal?

Q. November 8, 1963?

A. Prior to that date?

Q. Yes, sir.

A. No, sir.

Q. Had you ever talked to me?

A. No, sir.

Q. Had you ever seen me?

A. I don't believe I had ever seen you.

Q. Who else prior to that date did you ever talk to with the Federal Government, about any Hoffa matter?

A. I think agents of the Federal Bureau of Investigation.

Q. Agent Hank Hillen?

A. Yes, sir. He had a man with him. I don't know what his name was.

Q. I believe prior to the time that you had the con-



*Vick. Cross*

versation with Mr. Osborn, and he asked you to go contact Elliott, had you had a conversation with Polk, John Polk, another investigator, in which you had told Mr. Polk that Elliott was your cousin? That you knew two or three people on the jury?

A. I don't think I told Mr. Polk anything about Elliott. I told him I knew the people on the jury.

[200] Q. And did you have a conversation with Mr. Osborn on November 7, did you tell Mr. Osborn that you knew several people on the jury?

A. Yes.

Q. Did he ask you why you hadn't told him?

A. Yes.

Q. What did you say?

A. Well, I told him that I had previously told John Polk that I knew some people on this jury, in the conversation I had had with John, and I had assumed that John had told him, and he said that John had not told him.

Q. Mr. Vick, we have been talking about November 7, 1963, have you got the date in mind? That's the first conversation with Mr. Osborn?

A. That is right.

Q. Prior to that time you had called and asked for an appointment with Mr. Sheridan, is that correct?

A. Yes, sir.

Q. Would it refresh your recollection to say that was about August 1963?

A. Yes, sir, it was in the summer time.

Q. And I believe he told you he was busy at that time and you called him later?

*Vick. Cross*

A. Yes, that is correct.

Q. And you called him again and asked for an appointment?

A. Yes, I believe that is correct.

[201] Q. At that time had Mr. Sheridan ever asked to talk to you?

A. No, sir, I don't think he had ever asked to.

Q. At some time in August you came down and did talk to Mr. Sheridan at your request, did you not?

A. Yes, sir, I did.

Q. At that time did you tell him—at this very first conversation you ever had with Mr. Sheridan, did you tell him that in the 1962 Hoffa trial here that Mr. Osborn had made an effort to bribe Mrs. D. M. Harrison of Lebanon? Or words to that effect?

A. Well, I told him about the extent that, in which I was involved.

Q. You told him that you and Ramsey had went to—

A. Yes, that is correct.

Q. Had went to talk to Mr. Beard about Mr. Beard going to Mr. Harrison?

A. That is correct.

Q. And that you understood that that was on Mr. Osborn's direction?

A. Yes.

Q. You gave that answer to questions when Mr. Sheridan asked you, when you asked for this appointment, and he asked you, "Do you know of any activities of jury tampering at the last trial?" is that correct?

*Lansden. Cross*

[202] A. Yes, sir.

Q. And that's what you told him?

A. Yes, sir.

Q. And thereafter he asked you to report any illegal activities that you heard of?

A. Yes, sir.

Q. And specifically told you to report nothing else?

A. That is correct.

\* \* \* \* \*

Redirect examination by Mr. NORMAN:

\* \* \* \* \*

Q. Did you start working on this plan that you have just talked about in May of 1963?

A. No, sir, I did not.

[203] Q. Never had any connection with the Department of Justice about it until November, as you have told—

A. About this plan you are talking about?

Q. Yes, yes.

A. No, sir.

\* \* \* \* \*

TESTIMONY OF D. L. LANSDEN

(Supplementary to p. 146a, appellant's appendix)

[211] Cross-examination by Mr. NEAL:

Q. Mr. Lansden, I was not at that conversation?

A. No.

Q. You, of course—the understanding was, according to your testimony, that Mr. Osborn would come down and make a full statement, full, true, frank statement to the Court?

? JESTION

*Lansden. Cross*

A. A full disclosure was the language John used.

Q. A full disclosure. You, of course, don't know, of your own knowledge, whether Mr. Osborn made a full disclosure or not?

A. I have no knowledge.

Q. You do know that the Judges found, as a matter of fact, that he did not make a full disclosure? Whether you agree with [212] it or not, that was their finding?

A. No, I don't know that. I have never read the Judges' finding, except what was reported in the newspaper.

Q. Well, was it reported in the newspaper, within your knowledge, that the Judges found that he did not make a full statement?

A. I think that is probably correct, but I don't know that I have ever read the complete findings on the matter.

Q. Now, it is also within your knowledge, Mr. Lansden, you understand that it is possible for people to have different versions of the same conversation?

A. Why, of course.

Q. And both people be entirely honest and accurate. It is according to their recollection?

A. I think that is possible.

Q. I am sure as a prosecuting attorney, and an attorney for many years, you have had occasions where people were expressing their best memory and recollection of what occurred, and yet this would be conflicting versions?

A. I have seen that occur.



*Denney. Cross*

Q. Isn't it possible, sir, that Mr. Hooker said that he couldn't speak for the Judges, but that if Mr. Osborn would come down and make a full and fair and complete statement, that he would do everything he could to help him?

[213] A. I think he said that.

Q. Pardon me?

A. I think he said that.

Q. Wasn't that the gist of Mr. Hooker's statement?

A. I think that's an exact quotation of what John said, but it followed his preliminary statement of what authority he had. In other words, I think you are accurate as far as you go.

Q. Mr. Hooker's statement, then, following his representations of authority, was that if Mr. Osborn would come down, while he couldn't speak for the Judges, if Mr. Osborn would come down and make a full, fair disclosure of all the matters, Mr. Hooker would do everything he could to help him?

A. That if he made a full disclosure.

#### TESTIMONY OF W. RAYMOND DENNEY

(Supplementary to p. 150a, appellant's appendix)

[219] Cross-examination by Mr. NEAL:

Q. Do you agree with what Mr. Lansden said, after saying [220] that he had authority, and so forth, to speak for the Department of Justice, that he then said, "If Mr. Osborn will come down and make a full disclosure here, honest disclosure," that Mr. Hooker would do everything he could to help him?

*Denney. Cross*

A. He said that, and what I have also said, and what Mr. Lansden has also said. And of course, we knew that he felt that way about that.

Q. You of course again have no knowledge of your own, I am sure, that you are close to Mr. Osborn, and you all felt the same way about him, but you have no knowledge of your own whether he made a full disclosure or not?

A. I couldn't know that, no, sir.

Q. I believe that you probably followed the prosecution, and you probably remember that the Judges found that he did not?

A. Yes, sir.

Q. You remember that in the—I believe you have read the transcript of the recorded conversations between Vick and Mr. Osborn?

A. Yes, sir, in the office, and in the press. It has been given wide publicity.

Q. Do you remember that Mr. Osborn in there said, "And tell him there will be at least two others with him"?

A. Mr. Osborn told who this?

[221] Q. Told Vick that? Said, "Tell Elliott there will be at least two others with him."

A. I have recollections that something like that was said. I don't know what it means by "two others with him." I don't know whether he knew or not, either.

Mr. NEAL. No further questions.

The COURT. He was talking about jurors, I presume, "There will be two other jurors." Is that what you mean?

*Neal. Cross*

Mr. NEAL. Yes, that's the import—that's not in evidence yet.

The WITNESS. It has been filed before the Court, everybody can read it. I remember reading something like that.

By Mr. NEAL:

Q. He has never indicated, Mr. Osborn hasn't, who those other two jurors were?

A. No, sir.

TESTIMONY OF JAMES F. NEAL

Direct examination by Mr. HOOKER:

(Supplementary to p. 152a, appellant's appendix)

[230] Q. And I had told them if he would make a full disclosure of the facts that I would do whatever we could to help about it, that you and I would do whatever we could to help about it?

A. Yes, sir. And I said I would do whatever I could to abide by it.

Cross-examination by Mr. NORMAN:

[231] Q. Did you recommend prosecution?

A. I am trying to get into that.

Mr. NORMAN. Yes.

A. [Continuing] So I didn't think that he had made a full statement. I didn't think that he had made a full statement to the judges. I wouldn't have

*Neal. Cross*

thought that he would do this in the first place, and I was completely unbelieving. I didn't think he made a full statement.

I don't know whether I recommended the prosecution or not. I went along with the decision. I didn't object to it—the prosecution.

[232] Q. Did Mr. Hooker recommend the prosecution?

A. I don't believe Mr. Hooker had—I believe we both took the same position that it was going to be done. We didn't object to it. I don't think he said, "We ought to prosecute"—Mr. Hooker, or not. Don't think Mr. Hooker said that. I think we both stated we would hate to see prosecution there.

[233] Q. Did you all tell the Assistant Attorney General who later handed the order down about this conversation, there by these lawyers and Mr. Hooker?

A. The conversation as I understood it at that time, yes. We did tell them, and the conversation as I understood it at that time that if he would make a full, fair, frank statement, we would do everything we could to help him.

Q. In other words, the Assistant Attorney General who finally authorized it was fully apprised?

A. Yes, I believe so.

Q. Did the Attorney's General's office here, the District Attorney here, have a full file? I notice they are not handling the prosecution.

A. Well, they handled the Grand Jury.



*Neal. Cross*

Q. Did they make recommendation on the file, or just the special assistant down here?

A. Mr. Norman, I had nothing to do with this case. From the start it was distasteful.

Q. Well, you would know whether they made a report.

A. Well, I don't know whether they made a report to the Assistant Attorney down there, Mr. Charles Shafford.

Q. Did he recommend this prosecution?

A. Put it this way. I think we all agreed.

Mr. NORMAN. All right.

[234] A. (Continuing) In the meantime, Mr. Norman, the Beard matter had come in. Back in August, Mr. Vick told Mr. Sheridan that his information was he and Mr. Ramsay had gone to Beard at Lebanon—had in August, 1963. Osborn had said then that Mr. Beard said then to get Beard to go see Harrison.

When that was brought to my attention, I said, "There is nothing to that, don't go into that." And I personally saw no investigation was gone into about that because I didn't believe it at that time.

After the matter—after the Mr. Osborn's was first brought up, Mr. Beard promptly came in and made a statement saying that he had talked to Mr. Osborn. And Mr. Osborn has his testimony here today.

Now, you have got when the statement was made by Mr. Osborn. This wasn't a matter within our knowledge.

*Ruling on Motions*

Q. Mr. Hooker, you mean?

A. No, I mean—Mr. Hooker—I don't mean what—

Q. What are you trying to tell us, that that changed your mind there should be prosecution?

A. No, it didn't change my mind.

Q. Why did you suggest it, then?

A. I am suggesting that, as one finally to determine whether to prosecute or not, my mind was, as I said, pretty [235] well made up, as far as my mind could be made up, that Mr. Osborn did not make a full statement.

**RULING ON MOTIONS**

(Supplementary to p. 173a, appellant's appendix)

[238] The COURT. All right, gentlemen, on the authority of the Lopez case and the On Lee case, both cited in your memoranda, there can be no reasonable doubt concerning the Government's right in this proceeding to rely on the tape recording in question and also the testimony of Mr. Robert Vick relating to his conversations with the defendant at various times.

The Court might observe here that this does not appear to the Court to be a situation where Mr. Vick, through persuasion or deceitful representations, lured this defendant into commission of a federal crime. Neither Mr. Vick nor the Government agents, it seems clearly established, incited or created an offense in the mind of the defendant for the sole purpose of prosecuting and punishing it.

*Ruling on Motions*

The whole thing, it seems to the Court, stems from one of the conversations between Mr. Vick and Mr. Osborn, during which Mr. Vick [239] mentioned that he had a kinsman on the jury panel in question by the name of Elliott and was told then and there by the defendant to get him on his side of the case, and that there would be ten thousand dollars in it for Juror Elliott.

Here it appears to the Court to a legal certainty that the witness Vick merely afforded the opportunity for the commission of the offense here charged, which had its origin with the accused.

So, of course, the rule concerning entrapment is unavailable to the defendant. His constitutional rights concerning this phase of the matter have not been infringed, and the evidence will not be suppressed by the Court.

Now, the Court has ruled the tape recording in question and the conversations between the witness Vick and the defendant will be admissible in evidence in the further consideration of the case.

Going a step further, the Court rules the statements made by the defendant to Judge Miller during the hearings in chambers on or about November 19th or 20th, 1963, will also be ad- [240] missible. That evidence, in the Court's opinion, is not tainted in any way. Mr. Osborn, who himself had requested the hearing in Judge Miller's chambers, was duly advised by Judge Miller in the outset concerning his rights and all that was involved. His statements at that time beyond question were voluntary and without in-

*Ruling on Motions*

duancements of any kind or character, certainly insofar as the judges were concerned. I believe Judge Gray was there on these occasions, and it is for that reason that I say judges. In fact, the defendant requested that he be permitted to make the statements in question to the judges.

Now, prior to the meeting in Judge Miller's chambers, there was on behalf of the defendant a conference between Mr. Norman, the defendant's attorney, and Mr. Hooker, who was at that time, it seems, identified with the Department of Justice, and other lawyer friends of the defendant, including Mr. Denney and Mr. Lansden. All present at that conference were apparently sympathetic with the defendant and were very [241] anxious to help him.

Mr. Hooker did say on that occasion he would do all he could for the defendant if the defendant would make a full disclosure to Judge Miller and Judge Gray concerning this matter.

From a reference to the transcript of the first meeting in the Judges' chambers, especially in light of the other facts of the matter, the defendant apparently did not make a full and honest disclosure of his involvement. However that was, there was no further effort on Mr. Hooker's part to be of assistance to Mr. Osborn.

In this connection, there seems to be some misunderstanding as to just what Mr. Hooker said to Mr. Osborn and his lawyer friends. But the Court is well satisfied, even assuming there was anything which re-



*Slager. Direct*

sembled a promise of immunity—if that is the contention here, and the Court does not find that there was—the defendant made no statement to the judges as a result of any alleged promise which purported to cover his full connection with this matter. His original statement to the judges was nothing [242] more than a denial of his participation in it.

As the Court has said, what happened in this connection cannot be relied upon at this time as a basis for ruling the evidence in question inadmissible.

The Court is quite sure Mr. Hooker's alleged promise to do what he could in the circumstances—and that is about as far as he went, as the Court understands the proof in this connection—is not binding on the Court at this time.

Gentlemen, there is nothing here to suggest an entrapment in any form or any promise to defendant which he may rely upon to suppress any of the evidence in question. So the defendant's motion in all things is overruled.

**TESTIMONY OF ROBERT SLAGER**

(Supplementary to p. 190a, appellant's appendix)

Direct examination by Mr. NEAL:

[281]

[281] Q. What do you do? What is your work attached there to the office?

A. I am a Special Agent and I am assigned to the electronic section of the FBI laboratory.

*Slager. Direct*

[283] Q. Are you familiar with a tape recorder known as the Edwards Miniature Binaural Recorder?

A. Yes, sir.

Q. Will you tell us something about the capabilities of that recorder, assuming that recorder is in good working condition?

A. It is a pocket-size battery operated tape recorder that is designed for binaural recordings, for conversations on a concealed basis between individuals, better between close proximity at no more than, say, five to ten feet.

Q. Five to ten feet?

A. Yes, sir.

Q. Five to ten feet as the distance, the recording is a good one, the record isn't bad, you have an accurate recording of the conversation?

A. If the conversation is in normal tone of voice, I would say yes.

Q. What if there was some whisper?

A. Well, whispers might or might not get on—

Mr. NEAL: I see.

A. [Continuing]—the tape.

[284] Q. All right. If you are closer to him than ten feet, it would probably get on that, would it?

A. It would enhance the possibility, yes, sir.

Q. I see. Now, did you have occasion to see operator William Sheets on November 11, 1963?

A. I did.

Q. Where did you see him?

A. The FBI laboratory, Washington, D.C.

Q. Did you receive anything from him?

*Slager. Direct*

A. Yes, I did.

Q. What did you receive from him?

A. I received three spools of recording tape.

Q. All right. I am going to hand you what has been marked for identification Government's Exhibit number 10, and I am going to ask you if you recognize that.

A. Yes, sir, I do.

Q. Is that one of the spools of tape recording you received from Mr. Sheets on November 11th?

A. Yes, this is one of the spools I received.

Q. What did you do with that?

A. I was asked to see if I could enhance the intelligibility of parts of the conversation on the tape.

Q. Intelligibility—you mean coherence, audibility, understanding?

[285] A. Audibility.

Q. Why did you—or, yes, what did you do?

A. I took this particular tape here, and I put it on a machine that is designed to do nothing but play tape. In order to preclude the possibility that I would erase it—

Mr. NEAL. Yes.

A. [Continuing] I placed it on this machine and took the output of that machine to another recording machine on which I recorded a direct dubbed copy of this particular tape.

Q. What do you mean by direct dubbed copy?

A. It is a copy that is—a direct or a copy—it is the same, contains the same material, I should say. Whatever is on this tape would be on the dubbed tape.

*Slager. Direct*

Q. All right, did you do anything else? An exact replica of this?

A. Yes, it is an exact replica.

Mr. NEAL. All right.

A. Then I used the dubbed copy that I had made and tried it through a filtering technique to enhance the intelligibility that it contained.

Q. What does that mean? That is siphoning off some noises, irrelevant noises, something like that?

[286] A. To try to eliminate some of the interfering noises and in some areas where the speech is low and hard to understand to try to bring the intensity up so it is understandable.

Q. I see. Did you make—what do you call that copy?

A. Well, that I used—dubbed copy through the file ring mechanism, and then from the filtering mechanism I copied—made another copy of the dubbed.

Q. What do you call that last copy of the dubbed?

A. That is the filtered copy.

Q. The filtered copy. What did you do with the filtered copy?

A. Upon my completion?

Mr. NEAL. Yes.

A. [Continuing] I gave it and the direct copy and this original copy to Mr. Sheets.

Q. All right. Now, looking at Government's Exhibit number 10, and Government's Exhibit number 11, are those two of the things you gave back to Mr. Sheets?



*Slager. Direct*

A. Yes, sir, this he has here is the—

Q. 10.

A. [Continuing] is the spool I gave back to Mr. Sheets.

[287] Q. Yes, sir.

A. [Continuing] And this filtered dubbed copy is the spool I gave back to Mr. Sheets also.

Q. And Exhibit number 11 is the filtered copy made as you have indicated from Exhibit number 10?

A. That is correct.

Q. You gave both those back to Mr. Sheets in Washington?

A. Yes, sir.

Q. While the original recording was in your possession, that is, Government's Exhibit number 10, did you do anything to it that would affect in any way the sounds recorded on it?

A. No, sir.

Q. So it is in exactly the same position it was when you received it?

A. That is correct.

Q. One question, sir. The filtered copy, Government's Exhibit number 11, has the same sounds, same relevant sounds as Government's Exhibit number 10, is that correct?

A. Except for the frequencies that were filtered from the dubbed or direct copy you have.

Q. What do you mean—irrelevant sounds—the sounds—?

A. Irrelevant sounds—the frequencies below about

Whatever is on this tape would be on the dubbed tape.

*Vick. Direct*

150 cycles and those above approximately 3,000 cycles.  
[288] Q. So far as the conversation is concerned, does it have the same as Government's Exhibit number 10?

A. Essentially, yes.

Mr. NEAL. You may cross-examine.

Mr. NORMAN. No questions.

\* \* \* \* \*

TESTIMONY OF ROBERT D. VICK

Direct examination by Mr. HOOKER:

\* \* \* \* \*

(Supplementary to p. 195a, appellant's appendix)

[300] Q. Do you recall what was said in your first discussion, Mr. Vick?

A. With Mr. Beard?

Q. Yes.

A. Well, we wanted information about people in Lebanon, and whoever we had, I don't know how many—I don't recall now how many people we had in and around Lebanon and in Wilson County, but we wanted information on them, and Mr. Beard agreed to get this information.

Q. Was that before the trial started?

A. I am not sure. I believe it was, Mr. Hooker.

Q. Before the jury had been selected?

A. I believe it was.

[301] Q. Then on any other occasions did you see him after the jury had been selected?

A. Yes, sir.

\* \* \* \* \*

*Vick. Direct*

Q. And was that after Mrs. Harrison had been selected on the jury?

A. Yes, sir.

Q. What was said, if anything, in your conversation, the first conversation you had with him, in which the name of Mrs. David M. Harrison was discussed?

A. Well, Mr. Ramsey was present, and did some of the talking, and he was interested—we were interested in finding out all we could about Mrs. Harrison, her financial condition, and his, Mr. Harrison was a lawyer, we understood, and we wanted to find out all we could about their financial condition, and we wanted to know if Mr. Harrison—or Mr.—we wanted Mr. Beard to find out from Mr. Harrison whether he would represent some people in a land option deal, or something like this. And whether or not Mr. Harrison was prepared to fully educate his children, and something was said about a scholarship fund for his children.

Q. About a scholarship fund for his children?

A. And Mr. Beard agreed to go talk to Mr. Harrison. And——

Q. What if anything was said about what Mr. Harrison would be expected to do?

[302] A. Well, it was my understanding that Mr. Harrison was to talk to his wife about——

Q. You say that was your understanding. Was that what was said?

A. Yes.

Q. All right. Tell the jury the substance, as near as you can, of what was said in that connection.

*Vick. Direct*

A. Well, the whole point, Mr. Hooker, was to get Mr. Harrison to talk to his wife to be in sympathy with the case that she was involved in.

Q. Was that—and she was then on the jury in Federal Court?

A. Yes, sir.

Q. What do you mean by “being in sympathy?” What was said about that?

A. Well, I don’t recall exactly what was said, Mr. Hooker, but there is no doubt in my mind but this was the aim and the purpose.

Q. Well, the substance of it? Do you recall the substance of what was said about her being in sympathy, as you expressed it, with the case?

A. Well, she was—I think that Mr. Beard was to talk to Mr. Harrison about her voting for an acquittal for Mr. Hoffa, at least hang the jury, or something like that.

[303] Q. Well, was that said? Were the words “vote for acquittal” used in the conversation?

A. I am not absolutely positive, Mr. Hooker, but I feel certain it was.

Q. Was anything said—was the word “hung jury”, was that mentioned in the conversation?

Mr. NORMAN. I object to that as leading, if Your Honor please. Let him tell what was said, without suggestions from counsel.

The COURT. The witness has testified in substance that that was mentioned. I don’t believe there is anything objectionable in that last question.



*Vick. Direct*

Objection overruled.

Mr. NORMAN. Exception.

By Mr. HOOKER:

Q. Was that expression used, "hung jury"?

A. Yes, sir, I am sure it was, sir.

Q. How many times did you discuss with Mr. Beard, a lawyer at Lebanon, a former lawyer at Lebanon, about Mrs. Harrison?

A. About this matter that you are talking about, I don't think I talked to him but once. I may have talked to him twice, but I don't think I did.

Q. Was there anything said about him seeing anybody else?

[304] A. I don't believe there was.

Q. Not in your presence?

A. Not in my presence.

Q. And you think that that one conversation in which Mr. Harrison was discussed with Mr. Beard was the only time you were present when that was discussed?

A. Yes, sir.

Q. Now, Mr. Vick, after the Test Fleet case was over—Mr. Vick, you may have misunderstood a question, it has been suggested to me.

When I asked you if there was any suggestion that he see anybody else, I wan't referring to any other juror. Was there any discussion about him talking about this subject of Mrs. Harrison with anybody else?

A. Well, it was my understanding that he was to come back to see Mr. Osborn the next day.

*Sheridan. Recalled*

Mr. NORMAN. Now let him tell what was said, not his understanding. He said that nothing was said one way or the other.

By Mr. HOOKER:

Q. That is correct. Don't state what your understanding was, but state the best you can what the substance of the conversation was, if any, on that subject.

A. I believe—

[305] Mr. NORMAN. We object to that, if Your Honor please, unless he can state what was said.

By Mr. HOOKER:

Q. State your best recollection.

A. My best recollection is that Mr. Ramsey told Mr. Beard to come to see Mr. Osborn.

Q. Fred Ramsey is the one that said that?

A. Yes, sir.

Q. That was in a conversation at which you were present?

A. Yes, sir.

\* \* \* \* \*

TESTIMONY OF WALTER J. SHERIDAN, RECALLED

Direct examination by Mr. NEAL:

(Supplementary to p. 358a, appellant's appendix)

[569] Mr. NEAL: We will call Mr. Walter Sheridan.

[570] Mr. NORMAN. If your Honor please, if this is rebuttal testimony, this witness has already testified—it would not be proper at this time.

The COURT. Mr. Sheridan testified out of the jury's presence.

*Sheridan. Recalled*

~~Mr. NORMAN.~~ No, sir, he testified before the jury.

~~Mr. NEAL.~~ We have further testimony, I think, that is proper and competent on direct.

~~Mr. NORMAN.~~ It may be proper in rebuttal.

~~Mr. NEAL.~~ We think it is proper now.

~~The COURT.~~ You have matter in chief you want to bring out?

~~Mr. NEAL.~~ Yes, Your Honor.

~~Mr. NORMAN.~~ As long as it is something in chief, but not in rebuttal.

~~The COURT.~~ Mr. Sheridan was on the stand just a few minutes it seems to me, yesterday or the day before, and—

~~Mr. NEAL.~~ It was in the presence of the jury.

[571] ~~The COURT.~~ It was in the presence of the jury. And he is entitled to testify further.

[fol. 47]

IN THE UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

MINUTE ENTRY OF ARGUMENT AND SUBMISSION—April 21,  
1965 (omitted in printing).

[fol. 48]

IN THE UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT  
No. 16056

UNITED STATES OF AMERICA, Plaintiff-Appellee,

v.

Z. T. OSBORN, JR., Defendant-Appellant.

On Appeal from the United States District Court for the  
Middle District of Tennessee, Nashville Division.

OPINION—Decided August 27, 1965

Before: Miller, O'Sullivan and Edwards, Circuit Judges.

EDWARDS, Circuit Judge. Defendant appeals from his conviction before a United States District Court jury in Nashville, Tennessee, on one of two counts charging him with the crime of jury tampering. He was sentenced to three and one-half years in the federal penitentiary.

Defendant had been indicted on three counts of violating 18 U.S.C. § 1503. Count one of the indictment charged that appellant in November 1963 "did request, counsel, and direct" one Robert D. Vick to contact Ralph A. Elliott, who was and known to be a member of the petit jury panel

[File endorsement omitted]



from which jurors were to be drawn for a pending case, "and to offer and promise to pay the said Ralph A. Elliott \$10,000 to induce the said Elliott to vote for an acquittal" if Elliott were to be selected as a juror for that trial, this in violation of 18 U.S.C. § 1503.

Count Two charged a similar offense in November 1962 in relation to the "Test Fleet" trial, the request being alleged to have been made to a lawyer named Beard to approach D. M. Harrison, the husband of a sitting juror.

Defendant was convicted on Count One and acquitted on Count Two. The third count had been dismissed before trial.

[fol. 49] At the time of the events in question, defendant was a prominent and successful lawyer who had handled a good deal of important litigation. Just before the happenings which led to this indictment, he had served (and was serving) as local counsel for defendant James R. Hoffa in *United States v. James R. Hoffa & Commercial Carriers, Inc.* (Criminal No. 13,241, United States District Court, Middle District of Tennessee, Nashville Division) (the so-called "Test Fleet" case) wherein his client had been the subject of mistrial resulting from a divided or "hung" jury.

Subsequent to the conclusion of the "Test Fleet" case, evidence was presented to a federal grand jury which resulted in the indictment of Hoffa and a number of other defendants on charges of jury tampering pertaining to alleged approaches to the "Test Fleet" case jury. *United States v. James R. Hoffa, et al.*, (Criminal No. 11,989, United States District Court, Eastern District of Tennessee, Southern Division, at Chattanooga). See — F.2d — (C.A. 6, 1965), Decided July 29, 1965.

This Hoffa jury tampering case was originally scheduled to be tried in the United States District Court for the Middle District of Tennessee, Nashville, Tennessee, and it was expected that the jury panel for that District would be the panel from which the *Hoffa, et al.*, jury tampering case would be chosen.

Prior to the transfer of the *United States v. Hoffa, et al.*, trial on jury tampering to Chattanooga, Tennessee, the Federal Bureau of Investigation called to the attention of two of the United States District Judges for the Middle District of Tennessee (Judges Miller and Gray) that an informant, one Vick, had brought them charges to the effect that Hoffa's local counsel, defendant herein, was seeking to make contact through intermediaries with prospective members of the *Hoffa, et al.*, jury. Vick was an officer of the Nashville Police Department whom defendant had employed during the "Test Fleet" trial to investigate jurors. [fol. 50] The two District Judges, although openly skeptical of the information, authorized the informant to seek further conversation with defendant, carrying on his person a recording device by which they, the judges, would later be able to hear what transpired.

Vick twice talked with appellant with the recording device concealed on him, but it twice failed to operate. On the third occasion the recorder did operate and the tape thus produced resulted in such confirmation of Vick's information as to occasion appellant's disbarment in the federal courts and the indictment in the present case.

At trial of the presently considered charges Vick testified and the recording of the last of his conversations with appellant was introduced in corroboration.

Vick testified that his representations to appellant concerning conversations with and willingness to bribe prospective juror Elliott were false. At the time they were made, Vick indicated he was reporting to FBI and Justice Department personnel. The jury also heard defendant's admission that the transcript of this recording was "substantially correct."

Since on this appeal defendant's primary appellate issue is a claim of legal entrapment, we feel it relevant to reproduce the record of this conversation in its entirety:

"GIRL: You can go in now.

"VICK: O.K. honey.

"Hello, Mr. Osborn.

"OSBORN: Hello, Bob, close the door, my friend, and let's see what's up.

"VICK: How're you doing?

"OSBORN: No good. How're you doing?

"VICK: Oh, pretty good. You want to talk in here?

"OSBORN: How far did you go?

"VICK: Well, pretty far.

"OSBORN: Maybe we'd better ...

"VICK: Whatever you say. Don't make any difference to me.

"OSBORN: (Inaudible whisper.)

[fol. 51] "VICK: I'm comfortable, but er, this chair sits good, but we'll take off if you want to, but

"OSBORN: Did you talk to him?

"VICK: Huh?

"OSBORN: Did you talk to him?

"VICK: Yeah. I went down to Springfield Saturday morning and talked to er.

"OSBORN: Elliott?

"VICK: Elliott.

"OSBORN: (Inaudible whisper.)

"VICK: Huh?

"OSBORN: Is there any chance in the world that he would report you?

"VICK: That he will report me to the FBI? Why of course, there's always a chance, but I wouldn't get into it if I thought it was very, very great.

"OSBORN: (Laughed.)

"VICK: You understand that.

"OSBORN: (Laughing) Yeah, I do know. Old Bob first.

"VICK: That's right. Don't worry. I'm gonna take care of old Bob and I know, and of course I'm depending on you to take care of old Bob if anything, if anything goes wrong.

"OSBORN: I am. I am. Why certainly.

"VICK: Er, we had coffee Saturday morning and now I had previously told you that it's the son.

"OSBORN: It is?

"VICK: Yes, and not the father.

"OSBORN: That's right.

"VICK: The son is Ralph Alden Elliott and the father is Ralph Donnal. Alden is er — Marie, that's Ralph's wife who killed herself. That was her maiden name, Alden, see? Anyway, we had coffee and he's been on a hung jury up here this week, see?

"OSBORN: I know that.

"VICK: Well, I didn't know that but anyway, he brought that up so he got to talking about the last Hoffa case being hung, you know, and some guy refused [fol. 52] to hang it, see, and he said the guy was crazy, he should've took it, you know, and so we talked about and so just discreetly, you know, and course I'm really playing this thing slow, that's the reason I asked you if you wanted a lawyer down there to handle it or you wanted me to handle it, cause I'm gonna play it easy.

"OSBORN: The less people, the better.

"VICK: That's right. Well, I'm gonna play it slow and easy myself and er, anyway, we talked about er, something about five thousand now and five thousand later, see, so he did, he brought up five thousand see, and talking about about (sic) how they pay it off you know and things like that. I don't know whether he suspected why I was there or not cause I don't just drop out of the blue to visit him socially, you know. We're friends, close, and kin, cousins, but I don't ordinarily just, we don't fraternize, you know, and er, so he seemed very receptive for er, to hand the thing for five now and five later. Now, er, I thought I would report back to you and see what you say.

"OSBORN: That's fine! The thing to do is set it up for a point later so you won't be running back and forth.

"VICK: Yeah.

"OSBORN: Tell him it's a deal.

"VICK: It's what?



"OSBORN: That it's a deal. What we'll have to do when its gets down to the trial date, when we know the date, tomorrow for example if the Supreme Court rules against us, well, within a week we'll know when the trial comes. Then he has to be certain that when he gets on, he's got to know that he'll just be talking to you and nobody else.

"VICK: Social strictly.

"OSBORN: O yeah.

"VICK: I've got my story all fixed on that.

"OSBORN: Then he will have to know where to, he will have to know where to come.

"VICK: Well, er . . .

"OSBORN: And he'll have to know when.

[fol. 53] "VICK: Er, do you want to use him yourself? You want me to handle it or what?

"OSBORN: Uh huh. You're gonna handle it yourself.

"VICK: All right. You want to know it when he's ready, when I think he's ready for the five thousand. Is that right?

"OSBORN: Well no, when he gets on the panel, once he gets on the jury. Provided he gets on the panel.

"VICK: Yeah. Oh yeah. That's right. That's right. Well now, he's on the number one.

"OSBORN: I know, but now . . .

"VICK: But you don't know that would be the one.

"OSBORN: Well, I know this, that if we go to trial before that jury he'll be on it but suppose the government challenges him over being on another hung jury.

"VICK: Oh, I see.

"OSBORN: Where are we then?

"VICK: Oh I see. I see.

"OSBORN: So we have to be certain that he makes it on the jury.

"VICK: Well now, here's one thing, Tommy. He's a member of the CWA, see, and the Teamsters, or

"OSBORN: Well, they'll knock him off.

"VICK: Naw, they won't. They've had a fight with the CWA, see?

"OSBORN: I think everything looks perfect.

"VICK: I think it's in our favor, see. I think that'll work to our favor.

"OSBORN: That's why I'm so anxious that they accept him.

"VICK: I think they would, too. I don't think they would have a reason in the world to. I don't think that I'm under any surveillance or suspicion or anything like that.

"OSBORN: I don't think so.

"VICK: I don't know. I don't frankly think, since last year and since I told them I was through with the thing, I don't think I have been. Now Fred,

[fol. 54] "OSBORN: I don't think you have either.

"VICK: You know Fred and I may not (pause), he may be too suspicious and I may not be suspicious enough. I don't know.

"OSBORN: I think you've got it sized up exactly right.

"VICK: Well, I think so.

"OSBORN: Now, you know you promised that fella that you would have nothing more to do with that case.

"VICK: That's right.

"OSBORN: At that time you had already checked on some of the jury that went into Miller's court. You went ahead and did that.

"VICK: Well, here's another thing, Tommy.

"OSBORN: — — — church affiliations, background, occupation and that sort of thing on those that went into Miller's court. You didn't even touch them. You didn't even investigate the people that were in Judge Gray's court.

"VICK: Well, here's the thing about it, Tommy. Soon as this damn thing's over, they're gonna kick my — out anyway, so probably Fred's too. So, I might as well get out of it what I can. The way I look at it.

I might be wrong, cause the Tennessean is not gonna have anything to do with anybody that's had anything to do with the case now or in the past, you know that. Cause they're too close to the Kennedys.

"OSBORN: All right, so we'll leave it to you. The only thing to do would be to tell him in other words your next contact with him would be to tell him if he wants that deal, he's got it.

"VICK: O.K.

"OSBORN: The only thing it depends upon is him being accepted on the jury. If the government challenges him there will be no deal.

"VICK: All right. If he is seated.

"OSBORN: If he's seated.

"VICK: He can expect five thousand then and

"OSBORN: Immediately.

[fol. 55] "VICK: Immediately and then five thousand when it's hung. Is that right?

"OSBORN: All the way, now!

"VICK: Oh, he's got to stay all the way?

"OSBORN: All the way.

"VICK: No swing. You don't want him to swing like we discussed once before. You want him

"OSBORN: Of course, he could be guided by his own b , but that always leave a question. The thing to do is just stick with his crowd. That way we'll look better and maybe they'll have to go to another trial if we get a pretty good count.

"VICK: Oh. Now, I'm going to play it just like you told me previously, to reassure him and keep him from getting panicky, you know. I have reason to believe than he won't be alone, you know.

"OSBORN: You assure him of that. 100%.

"VICK: And to keep any fears down that he might have, see?

"OSBORN: Tell him there will be at least two others with him.

"VICK: Now, another thing, I want to ask you does John know anything. You know. I originally told John about me knowing.

"OSBORN: He does not know one thing.

"VICK: He doesn't know? O.K.

"OSBORN: He'll come in and recommend this man — and I'll say well just let it alone, you know.

"VICK: Yeah. So he doesn't know anything about this at all?

"OSBORN: Nothing.

"VICK: Now he hasn't seen me. When I first came here he was in here, see.

"OSBORN: — We'll keep it secret. The way to keep it safe is that nobody knows about it but you and me — Where could they ever go?

[fol. 56] "VICK: Well, that's it, I reckon, or I'll probable go down there. See, I'm off tonight. I'm off Sunday and Monday, see. That's why I talked to you yesterday. I had a notion to go down there yesterday cause I was off last night and I'm off again tonight.

"OSBORN: It will be a week at least until we know the trial date.

"VICK: O.K. You want to hold up doing anything further till we know.

"OSBORN: Unless he should happen to give you a call and — something like that, then you just tell him, whenever you happen to run into him.

"VICK: Well, he's not apt to call, cause see

"OSBORN: You were very circumspect.

"VICK: Yeah. We haven't talked really definite and I think he clearly understands. Now, he might, it seemed to me that maybe he thought I was joking or, you know.

"OSBORN: That's a good way to leave it, he's the one that brought it up.

"VICK: That's right.

"OSBORN: —

"VICK: Well, I knew he would before I went down there.



"OSBORN: Well, —

"VICK: Huh?

"OSBORN: I'll be talking to you.

"VICK: I'll wait a day or two.

"OSBORN: Yeah, I would.

"VICK: Before I contact him. Don't want to seem anxious and er

"OSBORN: —

"VICK: O.K. See you later."

The courts have repeatedly held that a recording of a conversation made by one party in the presence of but without the knowledge of another party, may be admitted in evidence [fol. 57] to corroborate the testimony of the party who makes the record.<sup>1</sup> *Lopez v. United States*, 373 U.S. 427 (1963); *On Lee v. United States*, 343 U.S. 747 (1952); *Monroe v. United States*, 234 F.2d 49 (C.A. D.C., 1956), cert. denied, 352 U.S. 873 (1956); *United States v. Hall*, 342 F.2d 849 (C.A. 4, 1965); *United States v. Schanerman*, 150 F.2d 941 (C.A. 3, 1945); *Addison v. United States*, 317 F.2d 808 (C.A. 5, 1963), cert. denied, 376 U.S. 905 (1964); *Byrnes v. United States*, 327 F.2d 825 (C.A. 9, 1964).

The principal limitation on this holding pertains to establishing the authenticity and the accuracy of the record. In the instant case the authenticity and accuracy of the quoted transcript is conceded.

In *United States v. Miller*, 316 F.2d 81 (C.A. 6, 1963), this court specifically declined to hold inadmissible evidence of government agents based on their hearing a radio transmission of a conversation by use of a transmitter (Fargo device) secreted on the person of one of the parties.

<sup>1</sup> In view of the strong dissent in *Lopez* (See *Lopez v. United States*, 373 U.S. at 446) to the controlling rule described above, it may be relevant to note that the essentials of search warrant procedures were carried out in the instant case, albeit no statutory authority for such a warrant exists. These include appearance before a court, a showing of probable cause, a specific judicial authorization for the search, including a description of method and object.

The statute under which this case was tried provides as follows:

"Whoever corruptly, or by threats or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any witness, in any court of the United States or before any United States commissioner or other committing magistrate, or any grand or petit juror, or officer in or of any court of the United States, or officer who may be serving at any examination or other proceeding before any United States commissioner or other committing magistrate, in the discharge of his duty, or injures any party or witness in [fol. 58] his person or property on account of his attending or having attended such court, or examination before such officer, commissioner, or other committing magistrate, or on account of his testifying or having testified to any matter pending therein, or injures any such grand or petit juror in his person or property on account of any verdict or indictment assented to by him, or on account of his being or having been such juror, or injures any such officer, commissioner, or other committing magistrate in his person or property on account of the performance of his official duties, or corruptly or by threats or force, or by any threatening letter or communication, influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice, shall be fined not more than \$5,000 or imprisoned not more than five years, or both. 18 U.S.C. § 1503."

This statute mirrors the national concern with preserving the integrity of the jury trial as the cornerstone of this nation's criminal law. Under its terms it is obvious that Congress has intended not merely to make successful bribing of a juror a crime, but likewise to make it a criminal offense to do any act which has the ultimate bribing of a juror as its purpose.

Defendant herein contends first, that what he did, did not constitute violation of this statute, and, second, that if it did, he was entrapped into doing it.

The principal interpretations of this statute have been made by the United States Supreme Court in *United States v. Russell*, 255 U.S. 138 (1921); *Sorrells v. United States*, 287 U.S. 435 (1932); and *Sherman v. United States*, 356 U.S. 369 (1958). (See also *United States v. Gosser*, 339 F.2d 102 (C.A. 6, 1964)). In these cases the following principles were laid down pertaining to the substantive offense and to the defense of legal entrapment.

In *Russell* we find this definition of the key word "endeavor."

"The word of the section is 'endeavor,' and by using it the section got rid of the technicalities which might [fol. 59] be urged as besetting the word 'attempt,' and it describes any effort or essay to accomplish the evil purpose that the section was enacted to prevent. Criminality does not get rid of its evil quality by the precautions it takes against consequences, personal or pecuniary. It is a somewhat novel excuse to urge that *Russell's* action was not criminal because he was cautious enough to consider its cost and be sure of its success. The section, however, is not directed at success in corrupting a juror but at the 'endeavor' to do so. Experimental approaches to the corruption of a juror are the 'endeavor' of the section." *United States v. Russell, supra*, at 143.

In *Sherman* we find this discussion of entrapment:

"To determine whether entrapment has been established, a line must be drawn between the trap for the unwary innocent and the trap for the unwary criminal. The principles by which the courts are to make this determination were outlined in *Sorrells*. On the one hand, at trial the accused may examine the conduct of the government agent; and on the other hand, the ac-

cused will be subjected to an 'appropriate and searching inquiry into his own conduct and *predisposition*' as bearing on his claim of innocence." (Emphasis supplied.) *Sherman v. United States*, *supra*, at 372-73.

And in *Sorrells* we find these crucial distinctions:

"It is well settled that the fact that officers or employees of the Government merely afford opportunities or facilities for the commission of the offense does not defeat the prosecution. Artifice and stratagem may be employed to catch those engaged in criminal enterprises. *Grimm v. United States*, 156 U.S. 604, 610; *Goode v. United States*, 159 U.S. 663, 669; *Rosen v. United States*, 161 U.S. 29, 42; *Andrews v. United States*, 162 U.S. 420, 423; *Price v. United States*, 165 U.S. 311, 315; *Bates v. United States*, 10 Fed. 92, 94, note, p. 97. *United States v. Reisenweber*, 288 Fed. 520, 526; *Aultman v. United States*, 289 Fed. 251. The appropriate object of this permitted activity, frequently essential to the enforcement of the law, is to reveal the criminal design; to expose the illicit traffic, the prohibited publication, the fraudulent use of the mails, the illegal conspiracy, or other offenses, and thus to disclose the would-be violators of the law. A different question is presented when the criminal design originates with the officials of the Government, and they implant in the mind of an innocent person the disposition to commit the alleged offense and induce its commission in order that they may prosecute." *Sorrells v. United States*, *supra* at 441-442. (Footnote omitted.)

In the evidence which we have set forth, we find ample grounds for affirmance of this jury verdict.

We are fully convinced that telling a third party to offer a bribe to a potential juror is a corrupt "endeavor to influence" within the meaning of the statute. 18 U.S.C. § 1503. We do not believe that this act is insulated from prosecution



by failure, or by lack of actual intent on the part of the third party ever to make the approach. The falsity of Vick's statement pertaining to Elliott closely parallels the situation in *Lopez*, where the Supreme Court said:

"Davis was not guilty of an unlawful invasion of petitioner's office simply because his apparent willingness to accept a bribe was not real. Compare *Wong Sun v. United States*, 371 U.S. 471. He was in the office with petitioner's consent, and while there he did not violate the privacy of the office by seizing something surreptitiously without petitioner's knowledge. Compare *Gouled v. United States, supra*, [225 U.S. 298]. The only evidence obtained consisted of statements made by Lopez to Davis, statements which Lopez knew full well could be used against him by Davis if he wished. We decline to hold that whenever an offer of a bribe is made in private, and the offeree does not intend to accept, that offer is a constitutionally protected communication." *Lopez v. United States, supra* at 438.

[fol. 61] Further, we find ample evidence to support this jury's rejection of the defense of entrapment. This transcript does not mirror the inducing of an unwilling party to commit a crime. This recorded conversation could have convinced the jury that defendant was a fully informed and eager jury tamperer, ready to seize the opportunity which he saw provided by Vick.

It seems significant to us that defendant was the first to name the juror supposed to be bribed; that after ascertaining that Vick had "gone pretty far," it was he who thought it might be desirable to move the conversation out of his office, presumably for the purpose of greater security; that it was he who decided that Vick should employ no intermediary in his contacts with the Elliott family; and that it was he who insisted that Elliott had to be chosen on the jury before the deal was complete or any money would be due.

Further, we regard the following portion of the transcript as peculiarly invulnerable to the interpretation that defendant had been reluctantly induced and entrapped into participation in a jury tampering scheme not resulting from his own plans and desires:

"VICK: Oh. Now, I'm going to play it just like you told me previously, to reassure him and keep him from getting panicky, you know. I have reason to believe that he won't be alone, you know.

"OSBORN: You assure him of that. 100%.

"VICK: And to keep any fears down that he might have, see?

"OSBORN: Tell him there will be at least two others with him."

In saying what we have said, we do not ignore the fact that defendant's principal point pertaining to entrapment concerns his argument that in conversations prior to this one he had effectively been induced to participate in the scheme which involved the proposed bribing of Elliott. His testimony pertaining to these prior unrecorded conversations [fol. 62] with Vick was evidence which the jury, if convinced of its accuracy, could have held to represent entrapment. But defendant's version of these prior conversations was not undisputed; Vick's testimony as to them was substantially different.

Generally, disputed fact questions concerning entrapment are for the jury to resolve. *Sorrells v. United States, supra*; *Sherman v. United States, supra* at 377, n.8. And here, there is undisputed evidence (in the evidence just quoted) from which the jury could have found that at most what the alleged entrapper did (at least on the last visit) was to provide "opportunity" for violation of the law.

We certainly do not find here undisputed evidence of a case where:

"[T]he Government plays on the weaknesses of an innocent party and beguiles him into committing crimes

which he otherwise would not have attempted." *Sherman v. United States*, *supra* at 376 (Footnote omitted.)

In defendant's brief much is made of the evil character of the informer, Vick. Vick's willingness to change sides from law enforcement to law violation, depending upon the inducement offered, seems apparent to us — as it doubtless did to the jury. While this moral flexibility was obviously one of the material issues bearing on the credibility of his testimony, it did not prevent jury consideration of that testimony — particularly where, as here, much of the testimony was corroborated by other evidence. *United States v. Thomas*, 342 F.2d 132 (C.A. 6, 1965).

Defendant's protests about the unreliability of Vick are diminished in force by substantial corroboration of the most damaging of Vick's testimony. It must also be remembered that in the first instance he chose Vick to work for him on a jury investigation in a criminal case, well-knowing his police employment<sup>2</sup> and his reputation. And the [fol. 63] credibility of defendant's own testimony was greatly damaged, as compared to his prior reputation, by the fact that he lied repeatedly under oath before the two District Judges about knowing anything at all about the Elliott approaches until he was confronted by the record of his own voice.

Further, as opposed to defendant's own testimony as to the nature of these unrecorded conversations, the jury had an opportunity to see and hear the testimony of the defendant and his accuser, Vick. The jury could, and doubtless did, compare the relative intelligence and determination and character and experience and legal training and knowledge of the two in determining whether or not Vick would be likely (as defendant claims) successfully to induce and entrap him.

Our review of the record indicates that there was evidence which required the United States District Judge to submit the case for jury decision.

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<sup>2</sup> At the time of Vick's first employment by defendant, he was a Deputy Sheriff.

Our review of the jury charge indicates that the issue of entrapment was properly submitted to this jury.

No challenge is brought to us pertaining to the impartiality of the jury which actually tried this case, nor to the events of the trial itself. Defendant made no motion for change of venue.

We are, however, confronted by a challenge to the composition and the impartiality of the grand jury which found the instant indictment. It is claimed that this grand jury was illegally impaneled and was preconditioned by pre-indictment publicity so as to deprive defendant of due process in its consideration of the government's evidence upon which the indictment was issued.

The first of these issues has been recently and carefully considered by this court, and decided adversely to appellant's claims. *United States v. James R. Hoffa, et al.*, — F.2d — (C.A. 6, 1965). Decided July 29, 1965. Although this case was before another panel of the court, we concur in the views therein expressed pertaining to the composition of this grand jury. *Swain v. Alabama*, 380 U.S. 202 (1965).

[fol. 64] On the issue of appellant's claim of prejudice resulting from pre-indictment publicity and alleged failures of the judge properly to screen the grand jury panel for bias, we find no grounds for reversal. Mr. Justice Black's opinion in *Costello v. United States*, 350 U.S. 359 (1956), indicates the limited nature of appellate review of grand jury indictment proceedings. Much of Mr. Justice Clark's majority opinion in *Beck v. Washington*, 369 U.S. 541 (1962), could be read as directly applicable to the instant case:

"Ever since *Hurtado v. California*, 110 U.S. 516 (1884), this Court has consistently held that there is no federal constitutional impediment to dispensing entirely with the grand jury in state prosecutions. The State of Washington abandoned its mandatory grand jury practice some 50 years ago. Since that time prosecutions have been instituted on informations filed by the prosecutor, on many occasions without even a



prior judicial determination of 'probable cause'—a procedure which has likewise had approval here in such cases as *Ocampo v. United States*, 234 U.S. 91 (1914), and *Lem Woon v. Oregon*, 229 U.S. 586 (1913) . . .

"In his attempts before trial to have the indictment set aside petitioner did not contend that any particular grand juror was prejudiced or biased. Rather, he asserted that the judge impaneling the grand jury had breached his duty to ascertain on *voir dire* whether any prospective juror had been influenced by the adverse publicity and that this error had been compounded by his failure to adequately instruct the grand jury concerning bias and prejudice. It may be that the Due Process Clause of the Fourteenth Amendment requires the State, having once resorted to a grand jury procedure, to furnish an unbiased grand jury. Compare *Lawn v. United States*, 355 U.S. 339, 349-350 (1958); *Costello v. United States*, 350 U.S. 359, 363 (1956); *Hoffman v. United States*, 341 U.S. 479, 485 (1951). But we find that it is not necessary for us to determine this question; for even if due process would require a State to furnish an unbiased [fol. 65] body once it resorted to grand jury procedure—a question upon which we do not remotely intimate any view—we have concluded that Washington, so far as is shown by the record, did so in this case." *Beck v. Washington*, *supra* at 545-46. (Footnote omitted.)

We hold that here, too, as in *Beck*, the appellant has not borne "the burden of showing essential unfairness" in relation to his indictment. *Beck v. Washington*, *supra* at 558.

The essential conflict of evidence developed in this trial pertaining to Count One concerned the initial conversations between Vick and defendant about prospective juror Elliott. Defendant's testimony varied in a number of respects (bearing on the defense of entrapment) from Vick's direct testimony. In this situation the appearance of the two District Judges to identify the Vick affidavit (upon which they authorized further investigation by use of a

recording device) and the admission of the affidavit itself, were not reversible error. The affidavit was a prior record of a statement by Vick consistent with his direct testimony which defendant had attacked. The District Judge held that the affidavit and the circumstances surrounding its origin and use were proper rebuttal. We find no abuse of discretion or reversible error in this ruling. *Goldsby v. United States*, 160 U.S. 70 (1895); *United States v. Alaimo*, 297 F.2d 604 (C.A. 3, 1961), *cert. denied*, 369 U.S. 817 (1962).

In this case at the conclusion of Judge Boyd's charge both sides stated that they had no exceptions to the jury instructions as given. We have reviewed the claims of error in the charge as given which defendant's counsel now presents on appeal and find no example of "plain error" therein. Rule 52(b) Fed. R. Crim. P. Taking the charge as a whole and its paragraphs in their proper context, we find the charge essentially fair.

As to the instructions submitted by defendant but denied or not employed by the District Judge, we find no reversible error. In most instances cited the instruction was [fol. 66] properly covered in the Judge's own language. Under the evidence in this case we do not believe that defendant was entitled to defendant's proffered instructions No. 4 or No. 24.

Defendant's proffered instruction No. 4 would have told the jury that they could not consider any evidence offered pertaining to one count in determining the truth or falsity of the other count. This instruction was not given and the District Judge did charge "that an existing disposition to commit a similar offense is an important factor to consider in determining whether there was a subsequent entrapment." We believe that where entrapment is offered as a defense, that this charge is a proper one. *Knight v. United States*, 310 F.2d 305 (C.A. 5, 1962).

Here evidence pertaining to Count Two was such that the jury might have concluded that defendant rejected the opportunity to make a bribe attempt largely because he deemed it impractical and unlikely to succeed, rather than because he rejected the whole idea.

Defendant's own testimony concerning his conversations with Henry Beard pertaining to juror, Mrs. Harrison, and his subsequent employment of Beard for reporting on jury panel members' backgrounds is hardly consistent with the argument of innocent gullibility which defendant proffered to the jury. We do not believe that the judge's refusal to instruct that the jury could not consider the testimony pertaining to Count Two (in the event they rendered a Not Guilty verdict thereon) was error.

We find no other issues of substance on this appeal and our review of the record does not disclose any reversible error.

Affirmed.

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[fol. 67]

IN THE UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

No. 16,056

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UNITED STATES OF AMERICA, Plaintiff-Appellee,

vs.

Z. T. OSBORN, JR., Defendant-Appellant.

---

Before: Miller, O'Sullivan and Edwards, Circuit Judges.

JUDGMENT—Filed August 27, 1965

Appeal from the United States District Court for the Middle District of Tennessee.

This Cause came on to be heard on the record from the United States District Court for the Middle District of Tennessee and was argued by counsel.

[File endorsement omitted]

On Consideration Whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed. No costs awarded. Rule 23(4).

Entered by Order of the Court.

Carl W. Reuss, Clerk.

[fol. 68]

IN THE UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

No. 16,056

[Title omitted]

Before: Miller, O'Sullivan and Edwards, Circuit Judges.

ORDER DENYING PETITION FOR REHEARING—

Filed October 8, 1965

A petition for rehearing having been received in the above-styled case and careful consideration having been given to its contents in the brief filed in support thereof, said petition is hereby Denied.

Entered by order of the court:

Carl W. Reuss, Clerk.

[File endorsement omitted]

[fol. 69] Clerk's Certificate to foregoing transcript (omitted in printing).



[fol. 70]

## SUPREME COURT OF THE UNITED STATES

No. 724—October Term, 1965

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Z. T. OSBORN, JR., Petitioner,

v.

UNITED STATES

---

## ORDER ALLOWING CERTIORARI—January 31, 1966

The petition herein for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice White and Mr. Justice Fortas took no part in the consideration or decision of this petition.

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**IN THE**

**Supreme Court of the United States**

**October Term, 1965**

**No.**

~~123~~ **29**

**Z. T. OSBORN, JR.,**

*Petitioner,*

**v.**

**UNITED STATES OF AMERICA.**

**PETITION FOR A WRIT OF HABEAS CORPUS TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT.**

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3

IN THE  
Supreme Court of the United States.

—  
October Term, 1965.

—  
No. .

—  
Z. T. OSBORN, JR.,

*Petitioner,*

v.

UNITED STATES OF AMERICA.

—  
**PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT.**

—  
Z. T. OSBORN, JR., your petitioner, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit, entered in the above-entitled matter on August 27, 1965.

**OPINION BELOW.**

The opinion of the court below (Appendix A, *infra*, pp. 1A-22A) is reported at 350 F. 2d 497.

**JURISDICTION.**

The judgment of the court below (Appendix B, *infra*, p. 23A) was entered on August 27, 1965. A timely petition for rehearing was denied on October 8, 1965 (Appendix C, *infra*, p. 24A). The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

2



**QUESTIONS PRESENTED.**

1. Whether a conviction can be sustained where the most telling evidence against the petitioner consisted of the recording of his conversation with an informer, not known by the petitioner to be such, which was obtained by means of a device concealed on the informer, who was sent with such equipment to the petitioner's office by two United States District Judges in order to record his conversation with the petitioner, and where judges testified at the trial that this was done to determine the truth.

2. Whether obtaining the recording of a conversation by a concealed device carried on the person without the knowledge of the individual to whom the carrier of the device is talking constitutes an unreasonable search and seizure in violation of the Fourth Amendment and in violation of petitioner's rights under the Fifth Amendment.

3. Whether *Olmstead v. United States*, 277 U. S. 455, and its progeny, *On Lee v. United States*, 343 U. S. 747, and *Lopez v. United States*, 373 U. S. 427, should now be overruled.

4. Whether the court should have decided the issue of entrapment under the facts of this case because of the conduct of the Government and the acquittal of petitioner on another count of the indictment used as the basis to show predisposition.

5. Whether it was prejudicial error for the trial court to instruct the jury that if they found the tape recording was legally obtained they should find there was no entrapment and return a verdict of guilty.

6. Whether it was prejudicial error to permit the two district judges to testify that they authorized sending Vick to petitioner equipped with a tape recorder and to receive in evidence Vick's affidavit.

7. Whether the conduct attributed to the petitioner constituted a violation of Section 1503, Title 18 U. S. C.

**CONSTITUTIONAL AND STATUTORY PROVISIONS  
INVOLVED.**

The Fourth Amendment to the Constitution declares that:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The Fifth Amendment provides in pertinent part:

\* \* \* nor shall any person \* \* \* be deprived of life, liberty, or property, without due process of law \* \* \*

Section 1503, Title 18 U. S. C., provides in pertinent part:

Whoever \* \* \* corruptly \* \* \* influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice, shall be fined not more than \$5,000 or imprisoned not more than five years, or both.

**STATEMENT.**

Petitioner was sentenced to three and a half years' confinement and a fine of \$5,000, following his conviction by a jury on one count of a three count indictment alleging violations of 18 U. S. C. § 1503; the court below affirmed.

**A. The Indictment.**

Count One of the indictment charged that petitioner in November 1963 "did request, counsel, and direct" one Robert D. Vick to contact Ralph A. Elliott, who was and known to be a member of the petit jury panel from which jurors were to be drawn for a pending case, "and to offer and promise to pay the said Ralph A. Elliott \$10,000 to induce the said Elliott to vote for an acquittal" if Elliott were to be selected as a juror for that trial, this in violation of 18 U. S. C. § 1503 (7a).<sup>1</sup>

Count Two charged a similar offense in November 1962 in respect of an earlier trial, the request being alleged to have been made to one Beard to approach D. M. Harrison who was the husband of a sitting juror (8a).

Count Three charged a similar offense in November 1962 in respect of the same earlier trial, the request being alleged to have been made to one Polk to attempt to arrange a meeting with Virgil Rye, who was the husband of a sitting juror.

Count Three was dismissed by the prosecution before trial (154a), and petitioner was acquitted on Count Two (735a). Accordingly, the statement that follows deals with the facts bearing on the first count, and is restricted, in view of the contentions made, to the evidence adduced by the prosecution. Only occasionally, to show that a particular matter is undisputed, will reference be made to testimony adduced by the defense.

---

1. The letter "a" refers to the petitioner's Appendix below, copies of which have been filed with the Clerk of this Court.

**B. Petitioner's Position; His Employment of Vick.**

This petitioner was one of the attorneys for the defendant James R. Hoffa, in the prosecution of the latter charging jury tampering that was pending in the Nashville Division of the Middle District of Tennessee, until that case was transferred to the Eastern District after Judge Gray recused himself (155a-157a; Govt. Exs. 5-7). That indictment was returned on May 9, 1963, and the transfer took place on December 28 of the same year (155a). Petitioner had earlier been counsel for Hoffa in a substantive prosecution that had commenced in October 1962 and was terminated by a mistrial in December 1962 (123a; Govt. Exs. 1-4).

In connection with the first trial about October 16, 1962, petitioner had employed one Robert D. Vick and others to make background investigations of prospective jurors with respect to race, religion, and employment (158a, 192a, 193a, 218a, 219a). At that time, Vick was a Deputy Sheriff who conducted spare time investigations for lawyers (217a-218a). Vick lost his job as a Deputy Sheriff, but in November 1962 became a member of the Nashville Police Department. A merger of Nashville and Davidson County Government was voted and Vick became fearful that he might not be able to keep his job when his department was to be merged with the sheriff's office, because in making juror investigations for Hoffa's lawyer he had come under the Hoffa stigma (214a, 220a, 221a, 224a, 225a).

In October 1963, pretending to fear loss of his job (220a-221a, 231a-232a) and needing money (225a-226a, 259a-296a, 273a), Vick several times solicited petitioner for further employment (226a, 259a-260a; *accord*, 129a). He had been paid for his previous work with checks drawn on the account of petitioner's law firm (161a; Govt. Ex. 8). Petitioner re-employed Vick for background investigations of the petit jurors drawn for the second Hoffa trial (197a-198a) and Vick was similarly paid for that work (198a).



**C. Vick's Status as a Federal Informer.**

At the time of the matters alleged in the indictment, Vick was, unbeknownst to petitioner (139a), working for the United States Government (139a) as an informer, although not formally an employee (163a-165a); his mission was to report "illegal activity" to the F. B. I. (165a, 166a, 167a, 216a, 225a, 226a, 273a; cf. 135a); he had offered to make any information he might obtain available to the F. B. I., and he desired an arrangement with the Government wherein he would be protected from prosecution in return for furnishing information (257a-258a). Vick sought such employment because, having lost his job in the sheriff's office, he wanted a "clean bill of health" from the Department of Justice (215a, 220a, 225a-226a).

The time when Vick became a Federal informer was not clarified until his statements to the prosecution were made available to the defense under the *Jencks* rule.

Agent Sheridan said he first met Vick in July or August 1963 (162a-163a). Called as a defense witness on the motion to suppress (128a-142a), Vick said he talked to Sheridan in August (141a), but insisted that he had no connection with the Department of Justice until November (142a). Testifying as a witness for the prosecution, Vick denied that he had become a government agent in May 1963 (227a), and said he only became one in July (228a).

After the defense had been furnished his earlier statements, Vick admitted that his first report to the F. B. I. had been made on February 24, 1963 (253a), and that he had made another report to the F. B. I. on June 14, at which time he had told them that he had been working and wished to work for petitioner, but also desired an arrangement whereby he would be protected from prosecution in return for furnishing information (250a-251a; accord, 257a-258a). Then (215a)—

"Q. Well, why did you tell us then that you had never made any offer to inform, this morning, before July?

"A. Well, I didn't intend to tell you that, Mr. Norman [defense counsel], if I did."

The testimony of the petitioner Osborn corroborated Vick's evidence that Osborn had no inkling of Vick's status as a Federal informer (449a, 456a, 457a, 463a).

Since the date of the matters alleged in the indictment, Vick, although paid by the Nashville Police Department, had done no work for them, but had been on special assignment for the Federal government (192a, 231a-233a; *accord*, 128a-129a).

#### **D. Vick's Proposal to the Petitioner.**

Late in October 1963, then, Vick was again making background investigations of prospective jurors for petitioner while reporting behind his employer's back to the F. B. I. At this point Vick said that Robert Elliott, one of the jurors on the list (156a; Govt. Exs. 6, 7), was a second cousin of his (200a-201a). According to Vick, petitioner then asked Vick to see Elliott (203a-204a).

After reporting this conversation to Sheridan, who had told Vick that he would like Vick to represent him (166a), Vick returned to petitioner on the next day, saying that he had seen Elliott and that Elliott was susceptible to hanging the Hoffa jury (206a). In fact, Vick had not seen Elliott (206a); when Vick told petitioner "I have been to see him," that was all a lie (264a)—and Vick had never intended to talk to or get in touch with Elliott (260a; *accord*, 132a, 135a, 138a-140a). Nothing had happened, the whole matter was Vick's pretense to petitioner (260a; *accord*, 135a). Further (Vick on cross-examination, 262a-263a):

"Q. But you did pretend to Tommy Osborn you would go to Mr. Elliott?

"A. Yes, sir, I did.

"Q. Could never any harm come out of it. You of course knew it at the beginning, didn't you?

"A. No intention whatever.

"Q. No intention whatever. So the only purpose was to lie to Osborn into believing you would, wasn't it?

"A. I suppose that is correct.

"Q. So, in order to build that a little stronger, to suck him in a little further, you then went back and told Osborn you saw Elliott?

"A. Yes.

"Q. And did you suck him in, did you?

"A. No, sir.

"Q. Why did——?

"A. The Department of Justice was trying to discover evidence of an effort at jury tampering, and I did go to see him.

"Q. It was false?

"A. Didn't intend to suck him in?

"Q. It was false?

"A. Yes.

"Q. But you told Osborn you had seen him?

"A. Yes, sir.

"Q. Well, the reason was to suck him in?

"A. Find out what he was going to do.

"Q. Find out what he was going to do?

"A. In fact, the Department of Justice didn't really believe we had had this conversation."

Vick "was trying to find out what Mr. Osborn's intentions were" (265a), although he, Vick, admitted that he did not intend to ever do anything about it (265a). "It was necessary—nobody believed that Mr. Osborn was attempting to tamper with the jury—the juror. It was necessary to go through with this in order to prove this" (266a). Further (still Vick on cross-examination, 266a-267a):

"Q. Yes. So your idea and your purpose was to get Mr. Osborn to follow your pretense, then? That right?

"A. No, sir.

"Q. Isn't that what you just said?

"A. I was trying to find out what Mr. Osborn's intentions were and prove it, and make a case, Mr. Norman.

"Q. Make a case?

"A. Yes, sir.

"Q. In other words, you were trying to make a case on him?

"A. I am a policeman, and you know this."

After Vick in his second conversation with petitioner had stated that "Elliott was susceptible to money for hanging this jury in this tampering case \* \* \* against Hoffa" (206a), petitioner according to Vick offered \$5,000 for Elliott when and if he got on the jury, and \$5,000 more after the trial, and that he should hold out for acquittal all the way (206a-207a). Vick reported this conversation (208a).

The record shows that, before Vick told Osborn that Elliott was a cousin of his, on October 21, 1963, he had advised Sheridan of that fact (556a).

The record also shows that in September 1963, before being employed by petitioner for the final work to be performed by Vick, and during the period when the work theretofore done by Vick was being done by others, Vick on his own obtained a copy of the jury list from the courthouse and went to a Nashville lawyer named Samuel Eugene Wallace (269a, 576a-580a). He told Wallace he had a cousin on the jury and asked Wallace whether he thought a juror would be worth \$50,000 to Hoffa; questioned as to this Vick answered "I don't know I could very well have done it. Mr. Wallace and I have discussed this" (269a). The question was repeated after objection and discussion (271a); now what do you say about it? Vick said "Now I say that I was trying to find out whether Mr. Wallace had any connection with the Hoffa case. He had said to me he had not. And perhaps I made some statement to find out whether he would have some connection there or not . . .



"Q. Do I understand you now to say you were trying to trap Mr. Wallace in something?

"A. No, sir, I was trying to find out . . ." (271a)

**E. Use by Vick of a Concealed Tape Recorder Authorized by Both United States District Judges.**

Vick made an affidavit covering his first conversation with petitioner concerning Elliott (201a; Govt. Ex. 17, 653a-655a). This was made available to the two United States District Judges for the Middle District of Tennessee (383a) who then (383a) "authorized further investigation of the matter, including, specifically, an authorization for the Department of Justice to send Robert D. Vick back to talk with [Osborn] equipped with a tape recorder."

The record shows that, unknown to petitioner (as indeed the prosecution admitted at the trial, 172a) Vick made three trips to petitioner's office with a tape recorder on his person.

The first such trip took place on November 8, 1963 (176a, 202a); on this occasion the recorder did not function (178a, 204a). A second trip was made on the following day (205a); but appellant was not in the office. Finally, on November 11, when Vick made a third trip to discuss Elliott with petitioner (180a-181a, 205a), the tape recorder worked. The tape was sent to the F. B. I. laboratory in Washington (181a), where a filtered copy was made (182a, 414a). The original tape was admitted as Govt. Ex. 10 (183a), the filtered copy as Govt. Ex. 11 (183a-184a), and the transcription as Govt. Ex. 12 (184a-185a). Both participants in the conversation, as well as the F. B. I. agent, agreed that the transcription accurately recorded the conversation (184a-185a, 210a, 426a).

That conversation had petitioner discussing with Vick means of reaching Elliott and offering to pay him money to hang the jury (532a-541a, 544a-547a, 548a, 553a); it is set forth in full in the opinion of the court below, *infra*, pp. 4A-11A.

**F. Confrontation and Disbarment.**

Petitioner on three separate occasions prior to the return of the indictment herein appeared before judges of the Middle District of Tennessee in respect of the matters alleged in that indictment.

On November 15, 1963, he appeared alone before Judges Gray and Miller. He waived counsel. Being told that there was substantial information to show his personal implication in a plan to contact and improperly influence a juror named Elliott, he denied generally any plan or efforts to tamper with or improperly influence the jury panel that had been drawn, and denied any conversation with anyone for that purpose, specifically denying any effort to contact Elliott. He was thereupon served with an order to show cause why he should not be disbarred, which had already been prepared (363a-366a; Govt. Ex. 13, 370a-381a).

On the next day, November 16, accompanied by two lawyers as counsel, petitioner appeared before Judge Gray to ask for the information that underlay the foregoing order to show cause. Judge Gray said that the two judges had three affidavits from Vick, that on the basis of the first one both judges had authorized Vick to take a tape recorder to record his further conversations with petitioner, and that they had the tape recording thus made, as well as further statements and affidavits. Judge Gray refused to make the statements available to petitioner, but said that the recorded conversation showed that petitioner had authorized an improper contact with Elliott (366a-367a; Govt. Ex. 14, 381a-384a).

A third hearing took place on November 19, 1963, before Judge Miller. Petitioner waived counsel, said he was appearing voluntarily, and denied that any promises, inducements, or representations had been made to him.

He said that he had warned Vick not to approach Elliott, that he had no plan to approach Elliott and no

authorization or source of funds for any offer to him. He said that, semi-exhausted with overwork, "I walked right into the trap," and that for the same reason he was susceptible to Vick's approach.

The tape recording and numerous affidavits were at this hearing received in evidence, and F. B. I. agents Steele and Sheets testified. Petitioner waived calling or cross-examining Vick, stated that the tape recording was accurate, and insisted he was led into the entire matter by Vick (367a-369a; Govt. Ex. 15, 385a-434a; sub-exhibits A through N to Govt. Ex. 15).

Testifying on his own behalf at the trial, petitioner admitted that he made untrue statements before Judges Gray and Miller at the first hearing because of a desire to protect Vick (467a, 514a-517a), and stated, what is not in controversy, that following those hearings he was disbarred and thereafter was indicted (469a). Disbarment proceedings against him in the State courts are pending but meanwhile he is not practicing law at all (510a-511a).

#### **G. The Rebuttal Testimony of the District Judges and the Reception in Evidence of Vick's Affidavit.**

The government was permitted, over objection, to adduce the testimony of District Judges Gray and Miller on rebuttal, after petitioner closed his defense, for the ostensible purpose of showing whether or not there was entrapment (651a-652a). The testimony of the judges related the circumstances under which they authorized the tape recording by Vick, particularly concerning the fact that they then had an affidavit from Vick (651a-662a). Vick's affidavit, which the court had previously refused to admit into evidence (407a-408a), was now received (Government Exhibit 17) over objection, and read to the jury (653a-656a). The judges were permitted to express deep concern over the gravity of the offense charged (657a-659a), and to voice the disbelief of the prosecutors in the charge of Vick (658a, 660a). Therefore, they testified, they authorized the tape

recording by Vick to determine what the truth was (657a, 659a-660a). The objections of petitioner were overruled, as was his motion to strike the testimony (661a-662a).

#### **H. Petitioner's Motion to Suppress.**

Petitioner filed a motion under Rule 41(e), F. R. Crim. P., to suppress the tape recording of his conversation with Vick on November 11, 1963, that Vick had obtained, and called Vick and other witnesses (128a-153a). This was before Vick's *Jencks* statements had been turned over. Vick's testimony accordingly differed from what he testified to at the trial in significant particulars.

At the hearing on the motion to suppress, Vick said he had never discussed Elliott with anyone before talking to petitioner (130a, 131a), specifically denying that he had discussed his relationship to Elliott with the United States Government (131a); at the trial it was shown that he had informed the F. B. I. agent Sheridan of his relationship to Elliott a week before he was reemployed by petitioner (348a-349a).

At the hearing on the motion to suppress, Vick said he never had any connection with the Department of Justice about his plan to supply information obtained while working for petitioner before November (142a); at the trial it was shown that he had made reports to the Department in February, June, July or August, and October.

Following the hearing on the motion to suppress, and on the basis of the evidence adduced at that time, the trial judge ruled that, on the authority of the *Lopez* and *On Lee* cases [*On Lee v. United States*, 343 U. S. 747; *Lopez v. United States*, 373 U. S. 427], the tape recording was admissible; and that there was no entrapment, because Vick did not lure the appellant into conversation but merely provided the opportunity, and because neither Vick nor the F. B. I. agents incited or created the offense (153a).



**I. Motion for Judgement of Acquittal.**

At the conclusion of evidence of the Government's case in chief a motion for judgment of acquittal was made. ". . . and for the reason that the Government's proof shows conclusively that any actions of the defendant in this cause proven by the Government were in connection, not with any offense or violation of the law, but with regard to a pretended offense, originated, designed, prepared, mechanized, instituted and continued by agents of the United States Government, and for the reason that any connection or association with or participation in said pretended offense, or offenses, by the defendant was the result of deliberate, premeditated and detailed fashioned entrapment on the part of the agents of the United States Government." This motion was overruled (435a-436a).

**J. The Charge Concerning Entrapment.**

In instructing the jury on the issue of entrapment, *inter alia*, the trial judge submitted as petitioner's contention that the tape recording was unlawfully obtained, and charged the jury that if they found against this contention they should find that there was no entrapment and return a verdict of guilty (697a-698a).

**K. The Ruling Below.**

In respect of the issues raised by the present petition, only the following need be noted:

The court below held that the recording was admissible, citing, *inter alia*, *On Lee v. United States*, 343 U. S. 747, and *Lopez v. United States*, 373 U. S. 427, adding in a footnote that

"In view of the strong dissent in *Lopez* (see *Lopez v. United States*, 373 U. S. at 446) to the controlling rule described above, it may be relevant to note that the essentials of search warrant procedures were car-

ried out in the instant case, albeit no statutory authority for such a warrant exists. These include appearance before a court, a showing of probable cause, a specific judicial authorization for the search, including a description of method and object." (Appendix A, *infra*, p. 11A)

On the entrapment issue, the court below, quoting the entire recorded conversation but not mentioning any of the prior conversations between Vick and the petitioner, concluded that the jury was justified in finding that there was no entrapment and that even though petitioner was acquitted on Count 2 the jury might still have properly considered the evidence pertaining to this Count on the issue of an existing disposition and that it was not error to refuse to charge the jury that "they could not consider any evidence offered pertaining to one count in determining the truth or falsity of the other count" (Appendix A, *infra*, pp. 21A-22A).

The court below held that telling a third person to offer a bribe to a prospective juror is a corrupt "endeavor to influence" within 18 U. S. C. § 1503, stating that the lack of intent on the part of Vick, the third person, who was a secret government agent, did not insulate petitioner from prosecution. (Appendix A, *infra*, p. 15A).

**REASONS FOR GRANTING THE WRIT.**

The classic dissent of Mr. Justice Brandeis in *Olmstead v. United States*, 277 U. S. 455, 471, still continues to trouble all who have occasion to consider the doctrine of that decision, despite its reaffirmance first in *On Lee v. United States*, 343 U. S. 747, and then more recently in *Lopez v. United States*, 373 U. S. 427. The present case, which demonstrates the permissible reach even today of the *Olmstead* rule, provides and indeed requires that its scope be once again scrutinized—and reexamined.

For here the agent wired-for-sound was sent to take down the petitioner's words, not by perhaps understandably over-zealous enforcement agents, but by two United States judges. However serious the offense of which petitioner has been convicted, however much it is an offense that impairs the due administration of justice, here the methods of detection used, where members of the bench have actually stepped down into the arena to track down suspected offenders on their own, seem to us to involve an infinitely more serious impairment of the administration of justice, one that is vastly more disturbing in its implications.

Accordingly, we think the time has once more come to grapple with the *Olmstead* problem—which will not down.

*First.* It may be taken as an infallible signal that reasoning is untenable whenever any essential link in the argument is dropped down from the text into a footnote. Here, after citing the *On Lee* and *Lopez* cases as authority—and in any lower Federal court the holdings of these cases were plainly binding and not open to reconsideration—the court below unconsciously but unmistakably pinpointed the vice in its process of arriving at the conclusion now sought to be reviewed when it footnoted the make-weight argument that what was done here could be equated with the issuance of a search warrant.

Quite apart from the admitted lack of statutory authority for a warrant in the present case, what was done

here differed in two material respects from recognized search warrant procedures.

One. When an officer of the law serves a warrant, he announces to all and sundry that he has such a warrant before proceeding to execute that source of his authority. Here, obviously, Vick never disclosed that he was a Government agent (which of course distinguishes the *Lopez* case without more), much less that he was wired for sound. Plainly, therefore, this situation cannot be analogized to the execution of a search warrant; search warrants are executed by persons who proclaim both their official status and the additional *ad hoc* authority that the warrant confers upon them.

Two. When a search warrant is duly issued by a court upon a showing of probable cause, the results of that search are retained by those charged with the enforcement of the law, after which the fruits of the lawful search are presented to the bodies or the individuals who are authorized to return indictments or to file informations. In the search warrant situation, the evidence obtained through execution of the warrant is never seen by the judge until it comes before him in due course, as by a motion to suppress, or by a motion to dismiss the resultant indictment, or in the course of the trial had on the indictment. Here however the fruits of Vick's wiring-for-sound were immediately played back to the two judges, as though the judges were themselves part of the prosecutorial staff.

Therein lies the grave irregularity disclosed by the present record: Two members of the Federal bench joined with and became indistinguishable from the prosecution, and at the trial testified on rebuttal, over objection, that they had authorized the recording to determine "what the truth was (657a, 659a-660a).

Without further elaboration, we submit that the situation presented here constitutes such a wide departure from the norm of hitherto accepted concepts of the judicial function as to call for this Court's scrutiny.



*Second.* The setting in which the present surreptitiously concealed recording device was used, not only with judicial sanction but literally because of judicial instigation, should strongly incline to a reexamination of the entire *Olmstead*, *On Lee*, and *Lopez* doctrine.

There is no need here to rehearse or even to summarize the arguments, so strongly made in the several dissenting opinions in the three cited cases, in support of the proposition that the carrying of a concealed recording device, of which a party is ignorant, in order to obtain statements from such party on which to institute a criminal prosecution, constitutes an unreasonable search and seizure in violation of the Fourth Amendment. Furthermore, a person is compelled to be a witness against himself and to forfeit his right of privacy, protected by the Fifth Amendment when incriminating conversations are secretly taken from him "by a contrivance of modern science." A person, it is submitted, has a right not to have his conversation recorded and divulged without his knowledge and consent.

It seems sufficient for present purposes merely to urge that, when the use of such a device is sanctioned in circumstances such as those now appearing, the doctrine permitting that use must be regarded as doubtful, calling for thorough reexamination of its premises.

Accordingly, without further discussion, we ask that the Court at this juncture frankly consider whether *Olmstead v. United States*, 277 U. S. 455, and its progeny, *On Lee v. United States*, 343 U. S. 747, and *Lopez v. United States*, 373 U. S. 427, should not now, at long last, be squarely overruled.

*Third.* How far did petitioner's acts in fact result from the suggestions made by Vick, who was the undercover agent of the F. B. I.

The court below failed to give any effect whatever to Vick's repeated admissions that he was only trying to

find petitioner's intentions and make a case.<sup>2</sup> See particularly 266a-267a, quoted *supra*, at p. 9.

In this connection, we refer to a recent thoughtful and scholarly study, "*The Serpent Beguiled Me and I Did Eat*"—*the Constitutional Status of the Entrapment Defense*, 74 Yale L. J. 942.

Starting with the premise expressed in *Sherman v. United States*, 356 U. S. 369, 372, that "Congress could not have intended that its statutes were to be enforced by tempting innocent persons into violations," the cited study suggests that a conviction can be had only in a situation where there are reasonable grounds for believing that the solicitee is engaged in criminal activity, and when it appears reasonably certain that he would have committed a similar offense in the absence of solicitation. Those prerequisites, plainly, are not present in the instant case.

The study goes on to say that "Solicitation for the sake of obtaining convictions transforms a law to promote the general welfare into a technique designed to foster disobedience in order to punish," and that "Since a solicited offense is contrived and controlled by the police, it is difficult to see how it could be harmful to society." Accordingly, the study concludes that "Any test . . . which allows unlimited solicitation and conviction of all those who succumb is inconsistent with the Constitution," because "Due process forbids the conviction of any person for a solicited offense unless he had been engaged in a course of criminal conduct or had a criminal design."

It is not necessary to pursue the matter at greater length now. In our view it is enough now to urge that, on this record, petitioner's conviction for the words spoken to his employee, Vick, at Vick's solicitation did not measure up to accepted constitutional norms. We submit that as a matter of law the court should have held that petitioner

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2. Vick, of course, testified he never had the slightest intention of approaching his cousin the juryman Elliott (132a-133a, 260a-263a). It was all a pretense.

was unlawfully entrapped and this issue should not have been submitted to the jury. At any rate, the court's interpretation of the entrapment issue is clearly erroneous in the belief that it should have been submitted to the jury (Appendix A, *infra*, pp. 16A-17A). Further, it was basic prejudicial error to instruct the jury that if the tape recording had been obtained by lawful means there was no entrapment and to return a verdict for the Government on Count One (698a).

There is simply no evidence to establish the fact that there was any thought in petitioner's mind of endeavoring to contact any juror until Vick attempted to try to find out what "Osborn's intentions were and prove it, and make a case, Mr. Norman" (266a), admittedly by a series of lies.

It is not the business of our Government to seek to try to find out what a person's intentions are by first tempting him to commit a crime where without the temptation there would have been no crime. There is no escape from the fact that Vick told Osborn that his cousin was on the jury panel only to tempt Osborn.

We submit that the power of the Government is abused when as here it is employed to tempt people to commit crimes rather than prevent crimes.

But, even if we should be wrong in asserting that petitioner was as a matter of law a victim of entrapment, at the very least he should in the interest of justice be granted a new trial on Count One, a trial in which no evidence of an alleged predisposition to commit the crime based on the matters alleged in Count Two would be admissible, inasmuch as all such evidence related to a matter in respect of which he has been finally and irrevocably acquitted.

*Fourth.* Petitioner points out that the so-called rebuttal testimony of Judges Gray and Miller exceeded the justification for rebuttal testimony. By this device, the government introduced to the jury the judges' belief that the

tape showed the truth, that petitioner was guilty. And, the testimony bound up the issue of entrapment with the issue of the legality of the tape recording—a proposition on which the trial judge erroneously instructed the jury that if they found that the recording was lawfully obtained, they should find that there was no entrapment and return a verdict of guilty (697a-698a).

Unlike *Lopez v. United States, supra*, where Justice Harlan stated, 373 U. S., at 437, “Accordingly, we do not reach the question whether the charge was in every respect a correct statement of the law.” in this case there is clear reversible error. “When a false issue of magnitude sufficient to nullify proper consideration of the issues is inserted into a case, the proper administration of justice is thwarted and a conviction so based cannot stand.” *Michaud v. United States*, 350 F. 2d 131, 134 (C. A. 10).

The decision of the court below, which sustains the admission into evidence of Vick’s affidavit to bolster the government’s case without limiting instructions, is in direct conflict with the decisions of the Fifth and Third Circuits: *Mellon v. United States*, 170 F. 2d 583, 585; *United States v. Toner*, 173 F. 2d 140, 142-143.

*Fifth.* Finally, unlike various other prosecutions recently sustained by the court below, see *United States v. Hoffa*, 349 F. 2d 20, here there was no actual “endeavor” to obstruct justice. Vick was working for the government and had previously informed government agent Sheridan of his relationship to Elliott. Except for his relationship to the government, Vick would have been a co-conspirator. Vick’s own words were that he intended to “make a case,” and all his reports to the petitioner were fiction, intended to lead him on. In the circumstances, an offense under 18 U. S. C. § 1503 was impossible.



**CONCLUSION.**

For the foregoing reasons it is respectfully submitted that this petition for a writ of certiorari should be granted.

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November 1965.

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**APPENDIX A.**

**Opinion Below.**

**No. 16056**

Filed  
Aug 27 1965  
Carl W. Reuss, Clerk

**UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

**UNITED STATES OF AMERICA,**  
*Plaintiff-Appellee,*

*v.*

**Z. T. OSBORN, JR.,**  
*Defendant-Appellant.*

**ON APPEAL from the  
United States District  
Court for the Middle  
District of Tennessee,  
Nashville Division.**

**Decided August 27, 1965.**

**Before: MILLER, O'SULLIVAN and EDWARDS, Circuit Judges.**

**EDWARDS, Circuit Judge.** Defendant appeals from his conviction before a United States District Court jury in Nashville, Tennessee, on one of two counts charging him with the crime of jury tampering. He was sentenced to three and one-half years in the federal penitentiary.

Defendant had been indicted on three counts of violating 18 U. S. C. § 1503. Count one of the indictment charged that appellant in November 1963 "did request, counsel, and direct" one Robert D. Vick to contact Ralph A. Elliott, who was and known to be a member of the petit jury panel from which jurors were to be drawn for a pending case, "and to offer and promise to pay the said Ralph A. Elliott \$10,000 to induce the said Elliott to vote for an acquittal" if Elliott were to be selected as a juror for that trial, this in violation of 18 U. S. C. § 1503.

Count Two charged a similar offense in November 1962 in relation to the "Test Fleet" trial, the request being alleged to have been made to a lawyer named Beard to approach D. M. Harrision, the husband of a sitting juror.

Defendant was convicted on Count One and acquitted on Count Two. The third count had been dismissed before trial.

At the time of the events in question, defendant was a prominent and successful lawyer who had handled a good deal of important litigation. Just before the happenings which led to this indictment, he had served (and was serving) as local counsel for defendant James R. Hoffa in *United States v. James R. Hoffa & Commercial Carriers, Inc.*, (Criminal No. 13241, United States District Court, Middle District of Tennessee, Nashville Division) (the so-called "Test Fleet" case) wherein his client had been the subject of mistrial resulting from a divided or "hung" jury.

Subsequent to the conclusion of the "Test Fleet" case, evidence was presented to a federal grand jury which resulted in the indictment of Hoffa and a number of other defendants on charges of jury tampering pertaining to alleged approaches to the "Test Fleet" case jury. *United States v. James R. Hoffa, et al.*, (Criminal No. 11,989, United States District Court, Eastern District of Tennessee, Southern Division, at Chattanooga). See — F. 2d — (C. A. 6, 1965), Decided July 29, 1965.



This Hoffa jury tampering case was originally scheduled to be tried in the United States District Court for the Middle District of Tennessee, Nashville, Tennessee, and it was expected that the jury panel for that District would be the panel from which the *Hoffa, et al.*, jury tampering case would be chosen.

Prior to the transfer of the *United States v. Hoffa, et al.*, trial on jury tampering to Chattanooga, Tennessee, the Federal Bureau of Investigation called to the attention of two of the United States District Judges for the Middle District of Tennessee (Judges Miller and Gray) that an informant, one Vick, had brought them charges to the effect that Hoffa's local counsel, defendant herein, was seeking to make contact through intermediaries with prospective members of the *Hoffa, et al.*, jury. Vick was an officer of the Nashville Police Department whom defendant had employed during the "Test Fleet" trial to investigate jurors.

The two District Judges, although openly skeptical of the information, authorized the informant to seek further conversation with defendant, carrying on his person a recording device by which they, the judges, would later be able to hear what transpired.

Vick twice talked with appellant with the recording device concealed on him, but it twice failed to operate. On the third occasion the recorder did operate and the tape thus produced resulted in such confirmation of Vick's information as to occasion appellant's disbarment in the federal courts and the indictment in the present case.

At trial of the presently considered charges Vick testified and the recording of the last of his conversations with appellant was introduced in corroboration.

Vick testified that his representations to appellant concerning conversations with and willingness to bribe prospective juror Elliott were false. At the time they were made, Vick indicated he was reporting to FBI and Justice Department personnel. The jury also heard defendant's

admission that the transcript of this recording was "substantially correct."

Since on this appeal defendant's primary appellate issue is a claim of legal entrapment, we feel it relevant to reproduce the record of this conversation in its entirety:

"GIRL: You can go in now.

"VICK: O. K. honey.

"Hello, Mr. Osborn.

"OSBORN: Hello, Bob, close the door, my friend, and let's see what's up.

"VICK: How're you doing?

"OSBORN: No good. How're you doing?

"VICK: Oh, pretty good. You want to talk in here?

"OSBORNE: How far did you go?

"VICK: Well, pretty far.

"OSBORN: Maybe we'd better . . .

"VICK: Whatever you say. Don't make any difference to me.

"OSBORN: (Inaudible whisper.)

"VICK: I'm comfortable, but er, this chair sits good, but we'll take off if you want to, but

"OSBORN: Did you talk to him?

"VICK: Huh?

"OSBORN: Did you talk to him?

"VICK: Yeah. I went down to Springfield Saturday morning and talked to er.

"OSBORN: Elliott?

"VICK: Elliott.

"OSBORN: (Inaudible whisper.)

"VICK: Huh?

"OSBORN: Is there any chance in the world that he would report you?

"VICK: That he will report me to the FBI? Why of course, there's always a chance, but I wouldn't get into it if I thought it was very, very great.

"OSBORN: (Laughed.)

"VICK: You understand that.

"OSBORN: (Laughing) Yeah, I do know. Old Bob first.

"VICK: That's right. Don't worry. I'm gonna take care of old Bob and I know, and of course I'm depending on you to take care of old Bob if anything, if anything goes wrong.

"OSBORN: I am. I am. Why certainly.

"VICK: Er, we had coffee Saturday morning and now I had previously told you that it's the son.

"OSBORN: It is?

"VICK: Yes, and not the father.

"OSBORN: That's right.

"VICK: The son is Ralph Alden Elliott and the father is Ralph Donnal. Alden is er—Marie, that's Ralph's wife who killed herself. That was her maiden name, Alden, see? Anyway, we had coffee and he's been on a hung jury up here this week, see?

"OSBORN: I know that.

"VICK: Well, I didn't know that but anyway, he brought that up so he got to talking about the last Hoffa case being hung, you know, and some guy refusing \$10,000 to hang it, see, and he said the guy was crazy, he should've took it, you know, and so we talked about and so just discreetly, you know, and course I'm really playing this thing slow, that's the reason I asked you if you wanted a lawyer down there

to handle it or you wanted me to handle it, cause I'm gonna play it easy.

"OSBORN: The less people, the better.

"VICK: That's right. Well, I'm gonna play it slow and easy myself and er, anyway, we talked about er, something about five thousand now and five thousand later, see, so he did, he brought up five thousand see, and talking about about (sic) how they pay it off you know and things like that. I don't know whether he suspected why I was there or not cause I don't just drop out of the blue to visit him socially, you know. We're friends, close, and kin, cousins, but I don't ordinarily just, we don't fraternize, you know, and er, so he seemed very receptive for er, to hand the thing for five now and five later. Now, er, I thought I would report back to you and see what you say.

"OSBORN: That's fine! The thing to do is set it up for a point later so you won't be running back and forth.

"VICK: Yeah.

"OSBORN: Tell him it's a deal.

"VICK: It's what?

"OSBORN: That it's a deal. What we'll have to do when it gets down to the trial date, when we know the date, tomorrow for example if the Supreme Court rules against us, well, within a week we'll know when the trial comes. Then he has to be certain that when he gets on, he's got to know that he'll just be talking to you and nobody else.

"VICK: Social strictly.

"OSBORN: O yeah.

"VICK: I've got my story all fixed on that.

"OSBORN: Then he will have to know where to, he will have to know where to come.



"VICK: Well, er . . .

"OSBORN: And he'll have to know when.

"VICK: Er, do you want to use him yourself? You want me to handle it or what?

"OSBORN: Uh huh. Your'e gonna handle it yourself.

"VICK: All right. You want to know it when he's ready, when I think he's ready for the five thousand. Is that right?

"OSBORN: Well no, when he gets on the panel, once he gets on the jury. Provided he gets on the panel.

"VICK: Yeah. Oh yeah. That's right. That's right. Well now, he's on the number one.

"OSBORN: I know, but now . . .

"VICK: But you don't know that would be the one.

"OSBORN: Well, I know this, that if we go to trial before that jury he'll be on it but suppose the government challenges him over being on another hung jury.

"VICK: Oh, I see.

"OSBORN: Where are we then?

"VICK: Oh I see. I see.

"OSBORN: So we have to be certain that he makes it on the jury.

"VICK: Well now, here's one thing, Tommy. He's a member of the CWA, see, and the Teamsters, or

"OSBORN: Well, they'll knock him off.

"VICK: Naw, they won't. They've had a fight with CWA, see?

"OSBORN: I think everything looks perfect.

"VICK: I think it's in our favor, see. I think that'll work to our favor.

"OSBORN: That's why I'm so anxious that they accept him.

"VICK: I think they would, too. I don't think they would have a reason in the world to. I don't think that I'm under any surveillance or suspicion or anything like that.

"OSBORN: I don't think so.

"VICK: I don't know. I don't frankly think, since last year and since I told them I was through with the thing, I don't think I have been. Now, Fred,

"OSBORN: I don't think you have either.

"VICK: You know Fred and I may not (pause) he, may be too suspicious and I may not be suspicious enough. I don't know.

"OSBORN: I think you've got it sized up exactly right.

"VICK: Well, I think so.

"OSBORN: Now, you know you promised that fella that you would have nothing more to do with that case.

"VICK: That's right.

"OSBORN: At that time you had already checked on some of the jury that went into Miller's court. You went ahead and did that.

"VICK: Well, here's another thing, Tommy.

"OSBORN: . . . church affiliations, background, occupation and that sort of thing on those that went into Miller's court. You didn't even touch them. You didn't even investigate the people that were in Judge Gray's court.

"VICK: Well, here's the thing about it, Tommy. Soon as this damn thing's over, they're gonna kick my —out anyway, so probably Fred's too. So I might as well get out of it what I can. The way I look at it.

I might be wrong, cause the Tennessean is not gonna have anything to do with anybody that's had anything to do with the case now or in the past, you know that. Cause they're too close to the Kennedys.

"OSBORN: All right, so we'll leave it to you. The only thing to do would be to tell him in other words your next contact with him would be to tell him if he wants that deal, he's got it.

"VICK: O. K.

"OSBORN: The only thing it depends upon is him being accepted on the jury. If the government challenges him there will be no deal.

"VICK: All right. If he is seated.

"OSBORN: If he's seated.

"VICK: He can expect five thousand then and

"OSBORN: Immediately.

"VICK: Immediately and then five thousand when it's hung. Is that right?

"OSBORN: All the way, now!

"VICK: Oh, he's got to stay all the way?

"OSBORN: All the way.

"VICK: No swing. You don't want him to swing like we discussed once before. You want him

"OSBORN: Of course, he could be guided by his own b , but that always leave a question. The thing to do is just stick with his crowd. That way we'll look better and maybe they'll have to go to another trial if we get a pretty good count.

"VICK: Oh. Now, I'm going to play it just like you told me previously, to reassure him and keep him from getting panicky, you know. I have reason to believe that he won't be alone, you know.

"OSBORN: You assure him of that. 100%.

"VICK: And to keep any fears down that he might have, see?

"OSBORN: Tell him there will be at least two others with him.

"VICK: Now, another thing, I want to ask you does John know anything. You know. I originally told John about me knowing.

"OSBORN: He does not know one thing.

"VICK: He doesn't know? O. K.

"OSBORN: He'll come in and recommend this man—and I'll say well just let it alone, you know.

"VICK: Yeah. So he doesn't know anything about this at all?

"OSBORN: Nothing.

"VICK: Now he hasn't seen me. When I first came here he was in here, see.

"OSBORN:—We'll keep it secret. The way to keep it safe is that nobody knows about it but you and me—Where could they ever go?

"VICK: Well, that's it, I reckon, or I'll probable go down there. See, I'm off tonight. I'm off Sunday and Monday, see. That's why I talked to you yesterday. I had a notion to go down there yesterday cause I was off last night and I'm off again tonight.

"OSBORN: It will be a week at least until we know the trial date.

"VICK: O. K. You want to hold up doing anything further till we know.

"OSBORN: Unless he should happen to give you a call and—something like that, then you just tell him, whenever you happen to run into him.

"VICK: Well, he's not apt to call, cause see

"OSBORN: You were very circumspect.



"VICK: Yeah. We haven't talked really definite and I think he clearly understands. Now, he might, it seemed to me that maybe he thought I was joking or, you know.

"OSBORN: That's a good way to leave it, he's the one that brought it up.

"VICK: That's right.

"OSBORN: —

"VICK: Well, I knew he would before I went down there.

"OSBORN: Well, —

"VICK: Huh?

"OSBORN: I'll be talking to you.

"VICK: I'll wait a day or two.

"OSBORN: Yeah, I would.

"VICK: Before I contact him. Don't want to seem anxious and er

"OSBORN: —

"VICK: O. K. See you later."

The courts have repeatedly held that a recording of a conversation made by one party in the presence of but without the knowledge of another party, may be admitted in evidence to corroborate the testimony of the party who makes the record.<sup>1</sup> *Lopez v. United States*, 373 U. S. 427 (1963); *On Lee v. United States*, 343 U. S. 747 (1952); *Monroe v. United States*, 234 F. 2d 49 (C. A. D. C., 1956),

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1. In view of the strong dissent in *Lopez* (See *Lopez v. United States*, 373 U. S. at 446) to the controlling rule described above, it may be relevant to note that the essentials of search warrant procedures were carried out in the instant case, albeit no statutory authority for such a warrant exists. These include appearance before a court, a showing of probable cause, a specific judicial authorization for the search, including a description of method and object.

*cert. denied*, 352 U. S. 873 (1956); *United States v. Hall*, 342 F. 2d 849 (C. A. 4, 1965); *United States v. Schanerman*, 150 F. 2d 941 (C. A. 3, 1945); *Addison v. United States*, 317 F. 2d 808 (C. A. 5, 1963), *cert. denied*, 376 U. S. 905 (1964); *Byrnes v. United States*, 327 F. 2d 825 (C. A. 9, 1964).

The principal limitation on this holding pertains to establishing the authenticity and the accuracy of the record. In the instant case the authenticity and accuracy of the quoted transcript is conceded.

In *United States v. Miller*, 316 F. 2d 81 (C. A. 6, 1963), this court specifically declined to hold inadmissible evidence of government agents based on their hearing a radio transmission of a conversation by use of a transmitter (Fargo device secreted on the person of one of the parties).

The statute under which this case was tried provides as follows:

“Whoever corruptly, or by threats or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any witness, in any court of the United States or before any United States commissioner or other committing magistrate, or any grand or petit juror, or officer in or of any court of the United States, or officer who may be serving at any examination or other proceeding before any United States commissioner or other committing magistrate, in the discharge of his duty, or injures any party or witness in his person or property on account of his attending or having attended such court, or examination before such officer, commissioner, or other committing magistrate, or on account of his testifying or having testified to any matter pending therein, or injures any such grand or petit juror in his person or property on account of any verdict or indictment assented to by him, or on account of his being or having been such juror, or injures any such officer, commissioner, or other committing magistrate in his person or

property on account of the performance of his official duties, or corruptly or by threats or force, or by any threatening letter or communication, influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice, shall be fined not more than \$5,000 or imprisoned not more than five years, or both. 18 U. S. C. § 1503."

This statute mirrors the national concern with preserving the integrity of the jury trial as the cornerstone of this nation's criminal law. Under its terms it is obvious that Congress has intended not merely to make successful bribing of a juror a crime, but likewise to make it a criminal offense to do any act which has the ultimate bribing of a juror as its purpose.

Defendant herein contends first, that what he did, did not constitute violation of this statute, and second, that if it did, he was entrapped into doing it.

The principal interpretations of this statute have been made by the United States Supreme Court in *United States v. Russell*, 255 U. S. 138 (1921); *Sorrells v. United States*, 287 U. S. 435 (1932); and *Sherman v. United States*, 356 U. S. 369 (1958). (See also *United States v. Gosser*, 339 F. 2d 102 (C. A. 6, 1964). In these cases the following principles were laid down pertaining to the substantive offense and to the defense of legal entrapment.

In *Russell* we find this definition of the key word "endeavor."

"The word of the section is 'endeavor,' and by using it the section got rid of the technicalities which might be urged as besetting the word 'attempt,' and it describes any effort or essay to accomplish the evil purpose that the section was enacted to prevent. Criminality does not get rid of its evil quality by the precautions it takes against consequences, personal or pecuniary. It is a somewhat novel excuse to urge that Russell's action was not criminal because he was

cautious enough to consider its cost and be sure of its success. The section, however, is not directed at success in corrupting a juror but at the 'endeavor' to do so. Experimental approaches to the corruption of a juror are the 'endeavor' of the section." *United States v. Russell*, *supra*, at 143.

In *Sherman* we find this discussion of entrapment:

"To determine whether entrapment has been established, a line must be drawn between the trap for the unwary innocent and the trap for the unwary criminal. The principles by which the courts are to make this determination were outlined in *Sorrells*. On the one hand, at trial the accused may examine the conduct of the government agent; and on the other hand, the accused will be subjected to an 'appropriate and searching inquiry into his own conduct and *predisposition*' as bearing on his claim of innocence." (Emphasis supplied.) *Sherman v. United States*, *supra*, at 372-73.

And in *Sorrells* we find these crucial distinctions:

"It is well settled that the fact that officers or employees of the Government merely afford opportunities or facilities for the commission of the offense does not defeat the prosecution. Artifice and stratagem may be employed to catch those engaged in criminal enterprises. *Grimm v. United States*, 156 U. S. 604, 610; *Goode v. United States*, 159 U. S. 663, 669; *Rosen v. United States*, 161 U. S. 29, 42; *Andrews v. United States*, 162 U. S. 420, 423; *Price v. United States*, 165 U. S. 311, 315; *Bates v. United States*, 10 Fed. 92, 94, note, p. 97. *United States v. Reisenweber*, 288 Fed. 520, 526; *Aultman v. United States*, 289 Fed. 251. The appropriate object of this permitted activity, frequently essential to the enforcement of the law, is to reveal the criminal design; to expose the illicit traffic,



the prohibited publication, the fraudulent use of the mails, the illegal conspiracy, or other offenses, and thus to disclose the would-be violators of the law. A different question is presented when the criminal design originates with the officials of the Government, and they implant in the mind of an innocent person the disposition to commit the alleged offense and induce its commission in order that they may prosecute." *Sorrells v. United States*, *supra* at 441-442. (Footnote omitted.)

In the evidence which we have set forth, we find ample grounds for affirmance of this jury verdict.

We are fully convinced that telling a third party to offer a bribe to a potential juror is a corrupt "endeavor to influence" within the meaning of the statute. 18 U. S. C. § 1503. We do not believe that this act is insulated from prosecution by failure, or by lack of actual intent on the part of the third party ever to make the approach. The falsity of Vick's statement pertaining to Elliott closely parallels the situation in *Lopez*, where the Supreme Court said:

"Davis was not guilty of an unlawful invasion of petitioner's office simply because his apparent willingness to accept a bribe was not real. Compare *Wong Sun v. United States*, 371 U. S. 471. He was in the office with petitioner's consent, and while there he did not violate the privacy of the office by seizing something surreptitiously without petitioner's knowledge. Compare *Gouled v. United States*, *supra*, [225 U. S. 298]. The only evidence obtained consisted of statements made by Lopez to Davis, statements which Lopez knew full well could be used against him by Davis if he wished. We decline to hold that whenever an offer of a bribe is made in private, and the offeree does not intend to accept, that offer is a constitutionally pro-

tected communication." *Lopez v. United States, supra* at 438.

Further, we find ample evidence to support this jury's rejection of the defense of entrapment. This transcript does not mirror the inducing of an unwilling party to commit a crime. This recorded conversation could have convinced the jury that defendant was a fully informed and eager jury tamperer, ready to seize the opportunity which he saw provided by Vick.

It seems significant to us that defendant was the first to name the juror supposed to be bribed; that after ascertaining that Vick had "gone pretty far," it was he who thought it might be desirable to move the conversation out of his office, presumably for the purpose of greater security; that it was he who decided that Vick should employ no intermediary in his contacts with the Elliott family; and that it was he who insisted that Elliott had to be chosen on the jury before the deal was complete or any money would be due.

Further, we regard the following portion of the transcript as peculiarly invulnerable to the interpretation that defendant had been reluctantly induced and entrapped into participation in a jury tampering scheme not resulting from his own plans and desires:

"VICK: Oh, Now, I'm going to play it just like you told me previously, to reassure him and keep him from getting panicky, you know. I have reason to believe that he won't be alone, you know.

"OSBORN: You assure him of that. 100%.

"VICK: And to keep any fears down that he might have, see?

"OSBORN: Tell him there will be at least two others with him."

In saying what we have said, we do not ignore the fact that defendant's principal point pertaining to entrapment

concerns his argument that in conversations prior to this one he had effectively been induced to participate in the scheme which involved the proposed bribing of Elliott. His testimony pertaining to these prior unrecorded conversations with Vick was evidence which the jury, if convinced of its accuracy, could have held to represent entrapment. But defendant's version of these prior conversations was not undisputed; Vick's testimony as to them was substantially different.

Generally, disputed fact questions concerning entrapment are for the jury to resolve. *Sorrells v. United States, supra*; *Sherman v. United States, supra* at 377, n. 8. And here, there is undisputed evidence (in the evidence just quoted) from which the jury could have found that at most what the alleged entrapper did (at least on the last visit) was to provide "opportunity" for violation of the law.

We certainly do not find here undisputed evidence of a case where:

"[T]he Government plays on the weaknesses of an innocent party and beguiles him into committing crimes which he otherwise would not have attempted." *Sherman v. United States, supra* at 376 (Footnote omitted.)

In defendant's brief much is made of the evil character of the informer, Vick. Vick's willingness to change sides from law enforcement to law violation, depending upon the inducement offered, seems apparent to us—as it doubtless did to the jury. While this moral flexibility was obviously one of the material issues bearing on the credibility of his testimony, it did not prevent jury consideration of that testimony—particularly where, as here, much of the testimony was corroborated by other evidence. *United States v. Thomas*, 342 F. 2d 132 (C. A. 6, 1965).

Defendant's protests about the unreliability of Vick are diminished in force by substantial corroboration of the most damaging of Vick's testimony. It must also be re-

membered that in the first instance he chose Vick to work for him on a jury investigation in a criminal case, well-knowing his police employment<sup>2</sup> and his reputation. And the credibility of defendant's own testimony was greatly damaged, as compared to his prior reputation, by the fact that he lied repeatedly under oath before the two District Judges about knowing anything at all about the Elliott approaches until he was confronted by the record of his own voice.

Further, as opposed to defendant's own testimony as to the nature of these unrecorded conversations, the jury had an opportunity to see and hear the testimony of the defendant and his accuser, Vick. The jury could, and doubtless did, compare the relative intelligence and determination and character and experience and legal training and knowledge of the two in determining whether or not Vick would be likely (as defendant claims) successfully to induce and entrap him.

Our review of the record indicates that there was evidence which required the United States District Judge to submit the case for jury decision.

Our review of the jury charge indicates that the issue of entrapment was properly submitted to this jury.

No challenge is brought to us pertaining to the impartiality of the jury which actually tried this case, nor to the events of the trial itself. Defendant made no motion for change of venue.

We are, however, confronted by a challenge to the composition and the impartiality of the grand jury which found the instant indictment. It is claimed that this grand jury was illegally impaneled and was preconditioned by preindictment publicity so as to deprive defendant of due process in its consideration of the government's evidence upon which the indictment was issued.

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2. At the time of Vick's first employment by defendant, he was a Deputy Sheriff.



The first of these issues has been recently and carefully considered by this court, and decided adversely to appellant's claims. *United States v. James R. Hoffa, et al.*, — F. 2d — (C. A. 6, 1965). Decided July 29, 1965. Although this case was before another panel of the court, we concur in the views therein expressed pertaining to the composition of this grand jury. *Swain v. Alabama*, 380 U. S. 202 (1965).

On the issue of appellant's claim of prejudice resulting from pre-indictment publicity and alleged failures of the judge properly to screen the grand jury panel for bias, we find no grounds for reversal. Mr. Justice Black's opinion in *Costello v. United States*, 350 U. S. 359 (1956), indicates the limited nature of appellate review of grand jury indictment proceedings. Much of Mr. Justice Clark's majority opinion in *Beck v. Washington*, 369 U. S. 541 (1962), could be read as directly applicable to the instant case:

"Ever since *Hurtado v. California*, 110 U. S. 516 (1884), this Court has consistently held that there is no federal constitutional impediment to dispensing entirely with the grand jury in state prosecutions. The State of Washington abandoned its mandatory grand jury practice some 50 years ago. Since that time prosecutions have been instituted on informations filed by the prosecutor, on many occasions without even a prior judicial determination of 'probable cause'—a procedure which has likewise had approval here in such cases as *Ocampo v. United States*, 234 U. S. 91 (1914), and *Lem Woon v. Oregon*, 229 U. S. 586 (1913) . . . .

"In his attempts before trial to have the indictment set aside petitioner did not contend that any particular grand juror was prejudiced or biased. Rather, he asserted that the judge impaneling the grand jury had breached his duty to ascertain on *voir dire* whether any prospective juror had been influenced by the adverse publicity and that his error had been compounded

by his failure to adequately instruct the grand jury concerning bias and prejudice. It may be that the Due Process Clause of the Fourteenth Amendment requires the State, having once resorted to a grand jury procedure, to furnish an unbiased grand jury. Compare *Lawn v. United States*, 355 U. S. 339, 349-350 (1958); *Costello v. United States*, 350 U. S. 359, 363 (1956); *Hoffman v. United States*, 341 U. S. 479, 485 (1951). But we find that it is not necessary for us to determine this question; for even if due process would require a State to furnish an unbiased body once it resorted to grand jury procedure—a question upon which we do not remotely intimate any view—we have concluded that Washington, so far as is shown by the record, did so in this case.” *Beck v. Washington*, *supra* at 545-46. (Footnote omitted.)

We hold that here, too, as in *Beck*, the appellant has not borne “the burden of showing essential unfairness” in relation to his indictment. *Beck v. Washington*, *supra* at 558.

The essential conflict of evidence developed in this trial pertaining to Count One concerned the initial conversations between Vick and defendant about prospective juror Elliott. Defendant’s testimony varied in a number of respects (bearing on the defense of entrapment) from Vick’s direct testimony. In this situation the appearance of the two District Judges to identify the Vick affidavit (upon which they authorized further investigation by use of a recording device) and the admission of the affidavit itself, were not reversible error. The affidavit was a prior record of a statement by Vick consistent with his direct testimony which defendant had attacked. The District Judge held that the affidavit and the circumstances surrounding its origin and use were proper rebuttal. We find no abuse of discretion or reversible error in this ruling. *Goldsby v. United States*, 160 U. S. 70 (1895); *United States v. Alaimo*, 297 F. 2d 604 (C. A. 3, 1961), *cert. denied*, 369 U. S. 817 (1962).

In this case at the conclusion of Judge Boyd's charge both sides stated that they had no exceptions to the jury instructions as given. We have reviewed the claims of error in the charge as given which defendant's counsel now presents on appeal and find no example of "plain error" therein. Rule 52(b) Fed. R. Crim. P. Taking the charge as a whole and its paragraphs in their proper context, we find the charge essentially fair.

As to the instructions submitted by defendant but denied or not employed by the District Judge, we find no reversible error. In most instances cited the instruction was properly covered in the Judge's own language. Under the evidence in this case we do not believe that defendant was entitled to defendant's proffered instructions No. 4 or No. 24.

Defendant's proffered instruction No. 4 would have told the jury that they could not consider any evidence offered pertaining to one count in determining the truth or falsity of the other count. This instruction was not given and the District Judge did charge "that an existing disposition to commit a similar offense is an important factor to consider in determining whether there was a subsequent entrapment." We believe that where entrapment is offered as a defense, that this charge is a proper one. *Knight v. United States*, 310 F. 2d 305 (C. A. 5, 1962).

Here evidence pertaining to Count Two was such that the jury might have concluded that defendant rejected the opportunity to make a bribe attempt largely because he deemed it impractical and unlikely to succeed, rather than because he rejected the whole idea.

Defendant's own testimony concerning his conversations with Henry Beard pertaining to juror, Mrs. Harrison, and his subsequent employment of Beard for reporting on jury panel members' backgrounds is hardly consistent with the argument of innocent gullibility which defendant proffered to the jury. We do not believe that the judge's refusal to instruct that the jury could not consider the testi-

mony pertaining to Count Two (in the event they rendered a Not Guilty verdict thereon) was error.

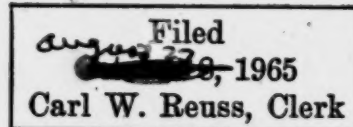
We find no other issues of substance on this appeal and our review of the record does not disclose any reversible error.

Affirmed.



**APPENDIX B.**

**Judgment.**



**UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT.**

**No. 15,623.**

**UNITED STATES OF AMERICA,**  
*Plaintiff-Appellee,*  
*v.*

**Z. T. OSBORN, JR.,**  
*Defendant-Appellant.*

**Before: MILLER, O'SULLIVAN and EDWARDS, Circuit Judges.**

**JUDGMENT.**

**APPEAL** from the United States District Court for the Middle District of Tennessee, Nashville Division.

**THIS CAUSE** came on to be heard on the record from the United States District Court for the Middle District of Tennessee, Nashville Division, and was argued by counsel.

**ON CONSIDERATION WHEREOF,** It is now ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

**No costs awarded. Rule 23(4).**

**Entered by order of the Court.**

**CARL W. REUSS,**  
*Clerk.*

**APPENDIX C.**

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**Order on Petition for Rehearing.**

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**No. 16,056.**

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Filed October 8, 1965 Carl W. Reuss, Clerk
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**UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT.**

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**UNITED STATES OF AMERICA,**  
*Plaintiff-Appellee,*

**v.**

**Z. T. OSBORN, JR.,**  
*Defendant-Appellant.*

---

**ORDER.**

---

**Before: MILLER, O'SULLIVAN and EDWARDS, Circuit Judges.**

A petition for rehearing having been received in the above-styled case and careful consideration having been given to its contents in the brief filed in support thereof, said petition is hereby **DENIED.**

**Entered by order of the court:**

**CARL W. REUSS,**  
*Clerk.*

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**In the Supreme Court of the United States**

**OCTOBER TERM, 1965**

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**No. 724**

**Z. T. OSBORN, JR., PETITIONER**

**v.**

**UNITED STATES OF AMERICA**

---

**ON PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE  
SIXTH CIRCUIT**

---

**BRIEF FOR THE UNITED STATES IN OPPOSITION**

---

**OPINION BELOW**

The opinion of the court of appeals is reported at 350 F. 2d 497.

**JURISDICTION**

The judgment of the court of appeals was entered on August 27, 1965. A petition for rehearing was denied on October 8, 1965. The petition for a writ of certiorari was filed on November 5, 1965. The juris-



diction of this Court is invoked under 28 U.S.C. 1254(1).

### QUESTIONS PRESENTED

1. Whether it was proper to admit, in corroboration of a witness' testimony, a recording of petitioner's conversation with the witness which had been taped pursuant to court authorization.

2. Whether testimony by district judges regarding their authorization of the taped recording was properly admitted in rebuttal.

3. Whether petitioner was entrapped as a matter of law.

4. Whether a portion of the court's instruction on entrapment constituted plain error.

5. Whether petitioner's conduct constituted an endeavor to obstruct justice, within the meaning of 18 U.S.C. 1503.

### STATUTE INVOLVED

18 U.S.C. 1503 provides in pertinent part:

Whoever corruptly, or by threats or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any witness, in any court of the United States or before any United States commissioner or other committing magistrate, or any grand or petit juror, \* \* \* or corruptly or by threats or force, or by any threatening letter or communication, influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice, shall be fined not more than

\$5,000 or imprisoned not more than five years, or both.

### STATEMENT

After a jury trial in the United States District Court for the Middle District of Tennessee, petitioner was convicted of corruptly endeavoring to influence, obstruct and impede the due administration of justice in that court in the trial of James R. Hoffa by requesting, counseling and directing Robert D. Vick to contact a member of the petit jury panel, and to offer him the sum of \$10,000 to vote for an acquittal, in violation of 18 U.S.C. 1503.<sup>1</sup> Petitioner was sentenced to imprisonment for three and a half years (1 R. 5-9, 734-735). The court of appeals affirmed.<sup>2</sup>

Petitioner was one of the defense counsel in *United States v. James R. Hoffa and Commercial Carriers* (known as the "Test Fleet case") which was tried in the United States District Court for the Middle District of Tennessee, October 22 to December 23, 1962 (1 R. 123-124, 440-441). The jury in that trial did not agree on a verdict, and a mistrial was declared (1 R. 401). There followed a grand jury investigation, which resulted in the indictment of Hoffa for jury tampering (1 R. 162). Robert D. Vick, a local officer who had done investigative work for petitioner

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<sup>1</sup> The indictment contained two other counts charging similar offenses with respect to an earlier trial of Hoffa. The government dismissed as to count 3 and petitioner was acquitted on count 2 (1 R. 154, 734-735).

<sup>2</sup> "1 R." and "2 R." refer to the appendices of appellant and appellee, respectively, in the court of appeals.

on the composition of the petit jury in the Test Fleet case, was re-employed in a similar capacity by petitioner in connection with the new charges (1 R. 159-160, 193, 195-196). After some preliminary communications by Vick to representatives of the Department of Justice (1 R. 224, 250-254), he talked with Walter Sheridan of the Department in July or August 1963. Vick explained that he needed a "clean bill of health" in order to continue in his job, which had been transferred from the county to the City of Nashville. Sheridan asked Vick to report any illegal activities by the defense in connection with the approaching trial of Hoffa for jury tampering, making clear that he was not interested in any of the legal activities of the defense (1 R. 161-168, 199, 216, 225-226).

In October 1963, petitioner employed Vick to do investigative work regarding the composition of the jury panel assigned to one of the two judges in the district since it was anticipated that members thereof might be drawn in the other judge's court, where the Hoffa case was to be tried (R. 197, 219). On November 7 or 8, Vick, while in petitioner's office in Nashville, mentioned that he knew some of the prospective jurors. Petitioner, according to Vick, jumped up and said, "You do? Why didn't you tell me?" Both then went outside and discussed the matter in the alley. Vick told petitioner that one juror—Ralph A. Elliott—was a cousin. Petitioner directed Vick to see if any arrangements could be made about the case (1 R. 200-201).

Vick reported this conversation to Sheridan (1 R. 198-199, 203). Vick's affidavit concerning this conversation was submitted by agents of the F.B.I. to the two district judges in Nashville, and they authorized the government to have Vick record subsequent conversations with petitioner (1 R. 383). On the following day, a tape recorder was concealed on Vick's person, and he returned to petitioner's office and thereafter conversed with him again in the street (1 R. 177, 202-203). Petitioner told Vick to let the juror state the amount he would need and then to double it; i.e., if Elliott wanted \$5,000, Vick was to offer him \$10,000. The conversation was not recorded because the device did not operate properly (1 R. 203-205). On a second trip the following day, the recorder again failed to function (1 R. 179-180).

A third visit was made by Vick to petitioner's office on November 11. This time the conversation was recorded. Vick testified at the trial to the substance of this conversation and was subject to cross-examination (1 R. 205-210). A complete transcript of this recording, admitted by petitioner to be substantially correct (1 R. 426), is set forth in the opinion of the court of appeals (Pet. App. 4-11). In this conversation Vick represented to petitioner that he had visited Elliott and had cautiously brought up the reported refusal of \$10,000 by a juror in the Test Fleet case; that Elliott had said that the man was crazy and should have taken it; and that Elliott was receptive to the idea of "five now and five later." Petitioner instructed Vick to tell Elliott that "it's a deal," and he



detailed the conditions under which payment would be made. Petitioner also told Vick to assure Elliott that "there will be at least two others with him."

On November 15, petitioner was asked to appear before both district judges in chambers. After advising petitioner of his rights, the senior judge asked petitioner if he had "any information concerning any plan or efforts to tamper with this jury or concerning any acts which have taken place for such purpose." Petitioner answered that he had not contacted or talked with any person for that purpose; that, on the contrary, he had been extraordinarily careful to have the people with whom he was working avoid any such implication (1 R. 363-366, 369-381). On the following day, petitioner and his counsel, appearing in response to an order to show cause why he should not be disbarred, were told of Vick's affidavit and the tape recording (1 R. 366-367, 381-385).

On November 19, petitioner appeared alone before the senior judge and asked for an immediate hearing (1 R. 367-369, 385-386). After stating that no promises or inducements had been made to him and that his statement was completely voluntary, petitioner asserted that he had first told Vick not to communicate with his cousin, but that when Vick raised the subject again, petitioner agreed because he was "susceptible to this thing", and was "conditioned for it" (1 R. 389-390). Petitioner also said that Vick had returned and reported that Elliott wanted \$10,000, half when he was seated and half when the trial was over, and that petitioner had said that was "all right." Petitioner admitted having told Vick to assure Elliott

not to worry because there would be other people with him on the jury, but said that the statement had been false and was made in order to encourage Vick to make a deal. Petitioner said that his thinking had not reached the question of what he would do if Elliott were actually seated; that he had no intention of seeing it through and that he had hoped and prayed that he himself would "have challenged the man." He said that he had no authorization from Hoffa or anyone else to contact jurors or to pay them money (1 R. 392-396, 430-432). Petitioner's testimony at trial was substantially to the same effect (1 R. 459-465).

#### ARGUMENT

1. Petitioner principally urges this Court to overrule its decision in *Lopez v. United States*, 373 U.S. 427, holding admissible in evidence a recording of a conversation between an Internal Revenue Agent and the defendant who offered him a bribe.<sup>3</sup> Petitioner also distinguishes *Lopez* on the ground that the prior judicial authorization here rendered the recording impermissible. We submit that not only is there no reason to reconsider the *Lopez* decision, but that its

<sup>3</sup> Petitioner also urges the Court to overrule *Olmstead v. United States*, 277 U.S. 438, 455, and *On Lee v. United States*, 343 U.S. 747, but the factual situations there differ from the present case. *Olmstead* involved wiretapping of telephone conversations without the knowledge of either party to the conversation. *On Lee* involved the admission of testimony by a person who electronically overheard a conversation between a government informant and the defendant, after indictment, where the informant was not produced as a government witness and was not subject to cross-examination.

result is patently correct when, as here, there has been some prior judicial determination that use of a recording device is justified. See 373 U.S. at 464 (dissenting opinion). The judges were not, as petitioner suggests, "stepping down into the arena" to bring an offender to justice when they authorized the government to seek more definite proof of Vick's allegations than his sworn statement. They did not then manifest any conviction that petitioner was guilty; indeed, their testimony indicates that they shared government counsel's skepticism as to the truth of Vick's allegations (1 R. 658-660).

2. It was proper rebuttal for the district judges to testify as to the circumstances which occasioned their authorization of the recording. The thrust of the defense was that the government had deliberately ensnared petitioner into conduct which he would otherwise have shunned. The judges' testimony was part of the government's answer to this allegation. It demonstrated that the recording—which was the most critical piece of evidence—was not obtained until after the judges were persuaded that there was a reasonable basis for further investigation. Vick's affidavit, previously excluded, was properly admitted at this point to show the basis for the judges' action. The seriousness with which the judges regarded the situation was not an adverse reflection upon petitioner's character. Indeed, it amounted to a recognition of his reputation for good character.

3. There was ample evidence from which the jury could infer that petitioner was not entrapped into committing this offense. The jury could properly be-

lieve Vick's testimony that, as soon as he mentioned having a cousin on the jury panel, petitioner inquired why he had not been told sooner, and then discussed this opportunity in greater detail. In addition, various statements made by petitioner in the course of the recorded conversation demonstrate that he was actively in charge of the endeavor to bribe Elliott and was not a reluctant accessory. Finally, petitioner's own account is hardly more favorable than Vick's on this issue. At best, petitioner's version shows that he seized, without undue persuasion, on Vick's suggestion that he could communicate with a prospective juror. Vick's initiation of this idea does not establish entrapment as a matter of law any more than does an undercover informant's request to purchase narcotics from a defendant. Petitioner, a member of the bar, can hardly claim entrapment because of an acquaintance's mention of relationship to a prospective juror, or even on account of the other's suggestion that the relative might be bribed. Such statements merely "afford opportunities" for the commission of a crime; they do not constitute inducement. *Sorrells v. United States*, 287 U.S. 435, 441-442; *Sherman v. United States*, 356 U.S. 369, 372.

Petitioner also urges that the jury should not have been allowed to consider in support of count 1 the occurrences regarding the Test Fleet trial, which framed the basis of count 2, on which petitioner was acquitted. However, when a defendant claims entrapment he becomes subject to an "appropriate and searching inquiry into his own conduct and predisposition." *Sorrells v. United States*, 287 U.S. at 451.

The jury could have acquitted on count 2 because it was not satisfied that petitioner had the necessary intent with regard to that abortive attempt and still have properly considered his participation as bearing upon his predisposition to commit the offense charged in count 1. Moreover, petitioner's own admissions, with respect to count 2 were particularly relevant with respect to his predisposition to commit the offense charged in count 1. *Knight v. United States*, 310 F. 2d 305 (C.A. 5).

4. The court gave a lengthy instruction on entrapment, and petitioner challenges only its concluding language. After defining entrapment with reference to the facts of this case, the court instructed (1 R. 697-698):

\* \* \* With respect to the first count of the indictment, it has been, as you know, contended by the defendant Osborn throughout the trial that he was the victim of an unlawful entrapment \* \* \* and that because of such unlawful entrapment the evidence aforesaid under the first count is not valid, and because of the unlawful nature of same, Count, One should not be permitted to stand and the defendant, therefore, should prevail at your hands with respect to that particular count of the indictment.

If you find in accordance with the defendant's contention aforesaid, and, incidentally, the burden is upon the Government to prove beyond a reasonable doubt the evidence aforesaid was not procured through unlawful entrapment, then you will find for the defendant on this particular count of the indictment.



ment and return a not guilty verdict on Count One.

If, on the other hand, you find on the facts and circumstances of this case and on the instructions as here given you by the Court that the evidence aforesaid, including the tape recording, was obtained by lawful means, that is, that there was no unlawful entrapment, you will find this particular issue against the defendant and your verdict on Count One would be for the Government.

This instruction obviously did not say to the jury "that if they found that the recording was lawfully obtained, they should find that there was no entrapment and return a verdict of guilty" (Pet. 21). It speaks of the "evidence aforesaid", which refers to *all* the evidence on count 1, including, *inter alia*, the tape recording. Moreover, it instructs the jury to find for the defendant on "this particular issue", not on the question of guilt or innocence. Counsel did not except to this charge (1 R. 703), and it was patently not "plain error" if it was error at all.

5. Petitioner urges briefly that there was no actual "endeavor" to obstruct justice because Vick had no intention to contact Elliott and never did contact him (Pet. 21). This contention is met by *United States v. Russell*, 255 U.S. 138, where it was held that the word "endeavor" is broader than "attempt" and that "it describes any effort or essay to accomplish the evil purpose that the section was enacted to prevent" (*id.* at 143). When petitioner first urged Vick to contact Elliott, he violated 18 U.S.C. 1503. See *Caldwell v. United States*, 218 F. 2d 370 (C.A.D.C.), cer-

tiorari denied, 349 U.S. 930; *Knight v. United States*, 310 F. 2d 305 (C.A. 5).

### CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

THURGOOD MARSHALL,  
*Solicitor General.*

FRED M. VINSON, JR.,  
*Assistant Attorney General.*

BEATRICE ROSENBERG,  
KIRBY W. PATTERSON,  
*Attorneys.*

DECEMBER 1965

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IN THE  
Supreme Court of the United States

October Term, 1965

No. 724. 29

Z. T. OSBORN, JR.,

*Petitioner,*

*v.*

UNITED STATES OF AMERICA.

On Petition for a Writ of Certiorari to the United States  
Court of Appeals for the Sixth Circuit.

PETITIONER'S REPLY MEMORANDUM.

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IN THE  
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965.

No. 724.

Z. T. OSBORN, JR.,

*Petitioner,*

v.

UNITED STATES OF AMERICA.

ON PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT.

PETITIONER'S REPLY MEMORANDUM.

Petitioner's principal arguments are set forth in full in his petition for certiorari. This reply brief is devoted to answering a few points raised by respondent and to rebutting arguments which misconstrue our position.

Mr. Justice Brandeis said, in *Olmstead v. United States*, 277 U. S. 438, 471, 485:

"Decency, security, and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the

citizen. In a government of laws, existence of the government will be imperilled if it fails to observe the law scrupulously. Our government is the potent, the omnipresent, teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the government becomes a law-breaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means—to declare that the government may commit crimes in order to secure the conviction of a private criminal—would bring terrible retribution. Against that pernicious doctrine this court should resolutely set its face.”

In the present case, it was a concealed Government agent who instigated the offense of which petitioner now stands convicted. We submit that, at least on two independent grounds, the conviction should be reviewed because it concerns serious aspects of federal criminal justice.

*First.* The prosecution's suggestion (Br. Op. 7-8) that here “there has been some prior judicial determination that use of a recording device is justified” obviously seeks to equate what was done here with the usual application for a search warrant.

But, as we have previously shown in detail (Pet. 16-17), the present situation differs so markedly from the normal course of search warrant procedure that the two are not even comparable.

We submit that the prosecution's effort to identify the present “authorization” to an undercover agent wired for sound, who never identified himself as a gov-

ernment agent, much less admitted that he was carrying a recording device, with the solemn procedure required by the Fourth Amendment, makes a mockery of a solemn constitutional guaranty.

*Second.* While, as we have argued, the present case differs from *Lopez v. United States*, 373 U. S. 427, in that there the defendant knew at all times that he was dealing with a government agent, and hence more closely resembles *On Lee v. United States*, 343 U. S. 747, where Chin Poy was masquerading as a friend, we submit that the circumstance that Vick here was produced as a witness hardly distinguishes the *On Lee* case, as the prosecution indeed seems to urge (Br. Op. 7, note 3).

Basically, the question is whether the use of the double deception employed here—a recording device concealed on the person of an individual whose status as a government agent was also concealed—measures up to the standards this Court requires for the conduct of a criminal trial in courts of the United States. And, even more importantly—whether it squares with the constitutional prohibition of unreasonable searches and seizures and the constitutional prohibition forbidding a person being compelled to be a witness against himself and forfeit his right of privacy—particularly here, where this dual subterfuge was employed with the sanction of two United States judges, who thus became active participants in the business of apprehending suspected offenders.

We submit that the course of conduct engaged in by the judges here, now approved and sanctioned by the decision below, strongly argues for reexamination of the doctrine spawned by the *Olmstead* case. We sug-

gest that it is accordingly once again time to inquire whether electronic ingenuity shall be permitted to overcome the Constitution.

*Third.* Insofar as any offense at all was committed here, it resulted from the importunities of the government agent, Vick.

This is not, as the prosecution urges (Br. Op. 9), "an undercover informant's request to purchase narcotics from a defendant," for two reasons.

One, the undercover informer intends to purchase narcotics and does so; here, however, Vick never had the slightest intention of approaching his cousin Elliott (132a-133a, 260a-263a).

Two, the undercover agent simply asks to purchase narcotics, he does not undertake an extended campaign of persuasion to induce the defendant to sell. The usual narcotics purchase case—or, during Prohibition, the usual liquor purchase case—is one of a willing seller. Indeed, this Court first recognized the doctrine of entrapment in a situation where the undercover decoy had importuned the defendant over an extended period. *Sorrells v. United States*, 287 U. S. 435.

Here there was involved just such a campaign of persuasion, with perhaps this variant, that whereas the undercover *agent provocateur* is more normally enlisted by law enforcement personnel (generally because of pressure they are able to exert because of the undercover informant's prior encounters with the law), here Vick volunteered and himself sought employment<sup>1</sup> as undercover agent to spy on the man who had only employed him after being several times asked to do so

---

1. As soon as Vick was employed by petitioner on October 28, he telephoned "this fact to Walter J. Sheridan" (653a). Previously on October 21, Vick had told Sheridan that Elliott was his cousin (349a).



(129a, 223a-226a, 259a-260a)—and Vick sought such undercover status in order to make a case against his own employer, the present petitioner (266a-267a, quoted at Pet. 9).

The Government passes over lightly the uncontradicted fact that "Vick mentioned having a cousin on the jury panel," but after frankly conceding that it was "Vick's initiation of this idea" condemns petitioner's subsequent conduct (Br. Op. 9).

The issue is thus drawn. Does our Government have a right to lead people<sup>2</sup> into temptation where without that temptation no crime would have been committed. We think not. In a very real sense this is an instance of crime manufactured because and only because of Vick who set out to "make a case" (267a). Consequently there was entrapment as a matter of law.

This Court under its supervisory<sup>3</sup> power of the "administration of criminal justice in the Federal

---

2. Even a member of the bar has some rights to a fair hearing. *Kingsland v. Dorsey*, 338 U. S. 318, 320. (Dissenting opinion by Mr. Justice Jackson.) Count Two of the indictment in which petitioner was acquitted should not be used as a basis to find that petitioner had a predisposition to commit the offense charged in Count One. There is no evidence in this case that the petitioner was engaged in the proscribed conduct to justify the entrapment by the Government. Vick said he wanted to know what petitioner's intentions were. That proves he did not know. Both counsel for the Government and the district judges did not believe and indeed had no basis for believing that, *at the time* that Vick was endeavoring to ascertain petitioner's intentions, he was engaged in any such proscribed conduct (55b). The attempt by the Government to bolster up Vick's unlawful entrapment of the petitioner by adding Counts 2 and 3 to the indictment in order to show that there was a predisposition on the part of the petitioner was clearly prejudicial. Count 3 was dropped by the Government before the trial having supplied "background," and Count 2, which alleged an endeavor a year before Count 1 and also supplied "background," simply was an incredible story by Beard which the jury properly refused to believe.

3. Note, *The Supervisory Power of the Federal Courts*, 76 HARV. L. REV. 1656 (1963).

*Petitioner's Reply Memorandum*

Courts" should not sanction such conduct by the Government.

**CONCLUSION.**

For the foregoing additional reasons it is respectfully submitted that this petition for a writ of certiorari should be granted.

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December 1965.

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IN THE  
**Supreme Court of the United States**

October Term, 1966.

**No. 29.**

**Z. T. OSBORN, JR.,**

*Petitioner,*

*v.*

**UNITED STATES OF AMERICA.**

On Writ of Certiorari to the United States Court of Appeals  
for the Sixth Circuit.

**BRIEF FOR THE PETITIONER.**

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**BRIEF FOR THE PETITIONER.**

—  
**OPINION BELOW.**

The opinion of the court below (R. 47-66) is reported at 350 F. 2d 497.

**JURISDICTION.**

The judgment of the court below (R. 66-67) was entered on August 27, 1965. A timely petition for rehearing was denied on October 8, 1965 (R. 67). The petition for certiorari was filed on November 5, 1965 and granted on January 31, 1966 (R. 68). The jurisdiction of this Court rests on 28 U. S. C. § 1254(1).

**QUESTIONS PRESENTED.**

1. Whether a conviction can be sustained where the most telling evidence against the petitioner consisted of the recording of his conversation with an informer, not known by the petitioner to be such, which was obtained by means of a device concealed on the informer, who was sent with such equipment to the petitioner's office by two United States District Judges in order to record his conversation with the petitioner, and where these judges testified at the trial that this was done to determine the truth.

2. Whether obtaining the recording of a conversation by a concealed device carried on the person without the knowledge of the individual to whom the carrier of the device is talking constitutes an unreasonable search and seizure in violation of the Fourth Amendment and in violation of petitioner's rights under the Fifth Amendment.

3. Whether *Olmstead v. United States*, 277 U. S. 438, and its progeny, *On Lee v. United States*, 343 U. S. 747, and *Lopez v. United States*, 373 U. S. 427, should now be overruled.

4. Whether the court should have decided the issue of entrapment under the facts of this case because of the conduct of the Government and the acquittal of petitioner on another count of the indictment used as the basis to show predisposition.

5. Whether it was prejudicial error for the trial court to instruct the jury that if they found the tape recording was legally obtained they should find there was no entrapment and return a verdict of guilty.



6. Whether it was prejudicial error to permit the two district judges to testify that they authorized sending Vick to petitioner equipped with a tape recorder and to receive in evidence Vick's affidavit.

7. Whether the conduct attributed to the petitioner constituted a violation of Section 1503, Title 18 U. S. C.

### **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.**

The Fourth Amendment to the Constitution declares that:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The Fifth Amendment provides in pertinent part:

"\* \* \* nor shall any person \* \* \* be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law \* \* \*."

Section 1503, Title 18 U. S. C., provides in pertinent part:

"Whoever \* \* \* corruptly \* \* \* influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice, shall be fined not more than \$5,000 or imprisoned not more than five years, or both."

**STATEMENT.**

Petitioner was sentenced to three and a half years' confinement and a fine of \$5,000, following his conviction by a jury on one count of a three-count indictment alleging violations of 18 U. S. C. § 1503; the court below affirmed.

**A. The Indictment.**

Count One of the indictment charged that petitioner in November 1963 "did request, counsel, and direct" one Robert D. Vick to contact Ralph A. Elliott, who was and known to be a member of the petit jury panel from which jurors were to be drawn for a pending case, "and to offer and promise to pay the said Ralph A. Elliott \$10,000 to induce the said Elliott to vote for an acquittal" if Elliott were to be selected as a juror for that trial, this in violation of 18 U. S. C. § 1503 (R. 7a).

Count Two charged a similar offense in November 1962 in respect of an earlier trial, the request being alleged to have been made to one Beard to approach D. M. Harrison who was the husband of a sitting juror (R. 8a).

Count Three charged a similar offense in November 1962 in respect of the same earlier trial, the request being alleged to have been made to one Polk to attempt to arrange a meeting with Virgil Rye, who was the husband of a sitting juror.

Count Three was dismissed by the prosecution before trial (R. 154a), and petitioner was acquitted on Count Two (R. 735a). Accordingly, the statement that follows deals with the facts bearing on the first count, and is restricted, in view of the contentions made, to

the evidence adduced by the prosecution. Only occasionally, to show that a particular matter is undisputed, will reference be made to testimony adduced by the defense.

### **B. Petitioner's Position; His Employment of Vick.**

This petitioner was one of the attorneys for the defendant James R. Hoffa, in the prosecution of the latter charging jury tampering that was pending in the Nashville Division of the Middle District of Tennessee, until that case was transferred to the Eastern District after Judge Gray recused himself (R. 155a-157a; Govt. Exs. 5-7). That indictment was returned on May 9, 1963, and the transfer took place on December 28 of the same year (R. 155a). Petitioner had earlier been counsel for Hoffa in a substantive prosecution that had commenced in October 1962 and was terminated by a mistrial in December 1962 (R. 123a; Govt. Exs. 1-4).

In connection with the first trial about October 16, 1962, petitioner had employed one Robert D. Vick and others to make background investigations of prospective jurors with respect to race, religion, and employment (R. 158a, 192a, 193a, 218a, 219a). At that time, Vick was a Deputy Sheriff who conducted spare time investigations for lawyers (R. 217a-218a). Vick lost his job as a Deputy Sheriff, but in November 1962 became a member of the Nashville Police Department. A merger of Nashville and Davidson County Government was voted and Vick became fearful that he might not be able to keep his job when his department was to be merged with the sheriff's office, because in making juror investigations for Hoffa's lawyer he had come under the Hoffa stigma (R. 214a, 220a, 221a, 224a, 225a).

In October 1963, pretending to fear loss of his job (R. 220a-221a, 231a-232a) and needing money (R. 225a-226a, 259a-269a, 273a), Vick several times begged petitioner for further employment (R. 225a, 259a-260a; *accord*, R. 129a). Petitioner re-employed Vick for background investigations of jurors (R. 197a-198a) on October 28. Vick telephoned "this fact" to Sheridan, Government agent, the same day (R. 653a).

### **C. Vick's Status as a Federal Informer.**

At the time of the matters alleged in the indictment, Vick was, unbeknownst to petitioner (R. 139a), working for the United States Government (R. 139a) as an informer, although not formally an employee (R. 163a-165a); his mission was to report "illegal activity" to the F. B. I. (R. 165a, 166a, 167a, 216a, 225a, 226a, 273a; cf. R. 135a); he had offered to make any information he might obtain available to the F. B. I., and he desired an arrangement with the Government wherein he would be protected from prosecution in return for furnishing information (R. 257a-258a). Vick sought such an arrangement because, having lost his job in the sheriff's office, he wanted a "clean bill of health" from the Department of Justice (R. 215a, 220a, 225a-226a).

The time when Vick became a Federal informer was not clarified until his statements to the prosecution were made available to the defense under the *Jencks* rule.

Agent Sheridan said he first met Vick in July or August 1963 (R. 162a-163a). Called as a defense witness on the motion to suppress (R. 128a-142a), Vick said he talked to Sheridan in August (R. 141a), but insisted that he had no connection with the Depart-



ment of Justice until November (R. 142a). Testifying as a witness for the prosecution, Vick denied that he had become a Government agent in May 1963 (R. 227a), and said he only became one in July (R. 228a).

After the defense had been furnished his earlier statements, Vick admitted that his first report to the F. B. I. had been made on February 24, 1963 (R. 253a), and that he had made another report to the F. B. I. on June 14, at which time he had told them that he wished to work for petitioner, but also desired an arrangement whereby he would be protected from prosecution in return for furnishing information (R. 250a-251a; *accord*, R. 257a-258a). Then (R. 252a)—

“Q. Well, why did you tell us then that you had never made any offer to inform, this morning, before July?”

“A. Well, I didn’t intend to tell you that, Mr. Norman [defense counsel], if I did.”

The testimony of the petitioner Osborn corroborated Vick’s evidence that Osborn had no inkling of Vick’s status as a Federal informer (R. 449a, 456a, 457a, 463a).

Since the date of the matters alleged in the indictment, Vick, although paid by the Nashville Police Department, had done no work for them, but had been on special assignment for the Federal government (R. 192a, 231a-233a; *accord*, R. 128a-129a).

#### **D. Vick’s Proposal to the Petitioner.**

On October 28, 1963, Vick was hired to make background investigations of prospective jurors for petitioner. Vick did not attempt to record any conversations between October 28 and November 7, 1963.

Vick testified that on November 7 he "got into a discussion of the jury panel" (R. 654a) with petitioner and told him that his cousin, Elliott, was on the jury (R. 200a-201a). According to Vick, petitioner then asked Vick to see Elliott (R. 203a-204a).

After reporting this conversation to Sheridan, who had told Vick that he would like Vick to represent him (R. 166a), Vick returned to petitioner on the next day, saying that he had seen Elliott and that Elliott was susceptible to hanging the Hoffa jury (R. 206a). In fact, Vick had not seen Elliott (R. 206a); when Vick told Petitioner "I have been to see him," that was all a lie (R. 264a)—and Vick had never intended to talk to or get in touch with Elliott (R. 260a; *accord*, R. 132a, 135a, 138a-140a). Nothing had happened, the whole matter was Vick's pretense to petitioner (R. 260a; *accord*, R. 135a). Further (Vick on cross-examination, R. 263a):

"Q. But you did pretend to Tommy Osborn you would go to Mr. Elliott?

"A. Yes, sir, I did.

"Q. Could never any harm there come out of it. You of course knew it at the beginning, didn't you?

"A. No intention whatever.

"Q. No intention whatever. So the only purpose was to lie to Osborn into believing you would, wasn't it?

"A. I suppose that is correct.

"Q. So, in order to build that a little stronger, to suck him in a little further, you then went back and told Osborn you saw Elliott?

"A. Yes.

"Q. And did you suck him in, did you?

"A. No, sir.

"Q. Why did——?"

"A. The Department of Justice was trying to discover evidence of an effort at jury tampering, and I did go to see him.

"Q. It was false?"

"A. Didn't intend to suck him in.

"Q. It was false?"

"A. Yes.

"Q. But you told Osborn you had seen him?"

"A. Yes, sir.

"Q. Well, the reason was to suck him in?"

"A. Find out what he was going to do.

"Q. Find out what he was going to do?"

"A. In fact, the Department of Justice didn't really believe we had had this conversation."

Vick "was trying to find out what Mr. Osborn's intentions were" (R. 265a), although he, Vick, admitted that he did not intend to ever do anything about it (R. 265a). "It was necessary—nobody believed that Mr. Osborn was attempting to tamper with the jury—the juror. It was necessary to go through with this in order to prove this" (R. 266a). Further (still Vick on cross-examination, R. 266a-267a):

"Q. Yes. So your idea and your purpose was to get Mr. Osborn to follow your pretense, then? That right?"

"A. No, sir.

"Q. Isn't that what you just said?"

"A. I was trying to find out what Mr. Osborn's intentions were and prove it, and make a case, Mr. Norman.

"Q. Make a case?"

"A. Yes, sir.

"Q. In other words, you were trying to make a case on him?"

"A. I am a policeman, and you know this."

After Vick in his second conversation with petitioner had stated that "Elliott was susceptible to money for hanging this jury in this tampering case \* \* \* against Hoffa" (R. 206a), petitioner according to Vick offered \$5,000 for Elliott when and if he got on the jury, and \$5,000 more after the trial, and that he should hold out for acquittal all the way (R. 206a-207a). Vick reported this conversation (R. 208a).

The record shows that, *before* Vick told Osborn that Elliott was a cousin of his, on October 21, 1963, he had advised Sheridan of that fact (R. 349a).

The record also shows that in September 1963, *before* being employed by petitioner for the final work to be performed by Vick, and during the period when the work theretofore done by Vick was being done by others, Vick *on his own* obtained a copy of the jury list from the courthouse and went to a Nashville lawyer named Samuel Eugene Wallace (R. 269a, 576a-580a). He told Wallace he had a cousin on the jury and asked Wallace whether he thought a juror would be worth \$50,000 to Hoffa; questioned as to this Vick answered "I don't know I could very well have done it. Mr. Wallace and I have discussed this" (R. 269a). The question was repeated after objection and discussion (R. 271a): "Now what do you say about it?" Vick said, "Now I say that I was trying to find out whether Mr. Wallace had any connection with the Hoffa case. He had said to me he had not. And perhaps I made some statement to find out whether he would have some connection there or not . . .



"Q. Do I understand you now to say you were trying to trap Mr. Wallace in something?

"A. No, sir, I was trying to find out . . ."  
(R. 271a)

**E. Use by Vick of a Concealed Tape Recorder Authorized by Both United States District Judges.**

Vick made an affidavit covering his first conversation with petitioner concerning Elliott (R. 201a; Govt. Ex. 17, R. 653a-655a). This was made available to the two United District Judges for the Middle District of Tennessee (R. 383a) who then (R. 383a) "authorized further investigation of the matter including, specifically, an authorization for the Department of Justice to send Robert D. Vick back to talk with [Osborn] equipped with a tape recorder." The prosecutor stated that "The government did not do that on its own" (R. 408a).

The record shows that, unknown to petitioner (as indeed the prosecution admitted at the trial, R. 172a) Vick made three trips to petitioner's office with a tape recorder on his person which he could turn off or on (R. 176a).

The first such trip took place on November 8, 1963 (R. 176a, 202a); on this occasion the recorder did not function (R. 178a, 204a). A second trip was made on the following day (R. 205a); but appellant was not in the office. Finally, on November 11, when Vick made a third trip to discuss Elliott with petitioner (R. 180a-181a, 205a), the tape recorder worked. The tape was sent to the F. B. I. laboratory in Washington (R. 181a), where a filtered copy was made (R. 182a, 414a). The original tape was admitted as Govt. Ex. 10 (R. 183a), the filtered copy as Govt. Ex. 11 (R. 183a-184a), and the transcription as Govt. Ex. 12 (R. 184a-185a).

Both participants in the conversation, as well as the F. B. I. agent, agreed that the transcription accurately recorded the conversation (R. 184a-185a, 210a, 426a).

That conversation had petitioner discussing with Vick means of reaching Elliott and offering to pay him money to hang the jury (R. 532a-541a, 544a-547a, 548a, 553a); it is set forth in full in the opinion of the court below (R. 49-56). There were no other recordings.

#### **F. Confrontation and Disbarment.**

Petitioner on three separate occasions prior to the return of the indictment herein appeared before judges of the Middle District of Tennessee in respect of the matters alleged in that indictment.

On November 15, 1963, he appeared alone before Judges Gray and Miller. He waived counsel. Being told that there was substantial information to show his personal implication in a plan to contact and improperly influence a juror named Elliott, he denied generally any plan or efforts to tamper with or improperly influence the jury panel that had been drawn, and denied any conversation with anyone for that purpose, specifically denying any effort to contact Elliott. He was thereupon served with an order to show cause why he should not be disbarred, which had already been prepared (R. 363a-366a; Govt. Ex. 13, R. 370a-381a).

On the next day, November 16, accompanied by two lawyers as counsel, petitioner appeared before Judge Gray to ask for the information that underlay the foregoing order to show cause. Judge Gray said that the two judges had three affidavits from Vick, that on the basis of the first one both judges had authorized Vick to take a tape recorder to record his further conversations with petitioner, and that they had the

tape recording thus made, as well as further statements and affidavits. Judge Gray refused to make the statements available to petitioner, but said that the recorded conversation showed that petitioner had authorized an improper contact with Elliott (R. 366a-367a; Govt. Ex. 14, R. 381a-384a).

A third hearing took place on November 19, 1963, before Judge Miller. Petitioner waived counsel, said he was appearing voluntarily, and denied that any promises, inducements, or representations had been made to him.

He said that he had warned Vick not to approach Elliott, that he had no plan to approach Elliott and no authorization or source of funds for any offer to him. He said that, semi-exhausted with overwork, "I walked right into the trap," and that for the same reason he was susceptible to Vick's approach.

The tape recording and numerous affidavits were at this hearing received in evidence, and F. B. I. agents Steele and Sheets testified. Petitioner waived calling or cross-examining Vick, stated that the tape recording was accurate, and insisted he was led into the entire matter by Vick (R. 367a-369a; Govt. Ex. 15, R. 385a-434a; sub-exhibits A through N to Govt. Ex. 15).

Testifying on his own behalf at the trial, petitioner admitted that he made untrue statements before Judges Gray and Miller at the first hearing because of a desire to protect Vick (R. 467a, 514a-517a), and stated, what is not in controversy, that following those hearings he was disbarred and thereafter was indicted (R. 469a). Disbarment proceedings against him in the State courts are pending but meanwhile he is not practicing law at all (R. 510a-511a).

**G. Vick's Offers to Change His Testimony.**

Much of Vick's cross-examination was devoted to showing that, in numerous conferences with members of the Teamsters Union, he had said that he could prove that he had entrapped Osborn (R. 283a), and that if entrapment were proved Hoffa would be out (R. 295a, 296a).

One such meeting was in Louisville, Ky. (R. 244a *et seq.*, 316a-330a), another in Indianapolis (R. 241a-243a, 315a-317a), and a third in May 1964 in the Holiday Inn Motel near or just outside Nashville (R. 275a-298a, 300a-314a, 315a). Vick's testimony regarding the purpose of the meeting varied from "I think they wanted to talk to me to try to get me to change my testimony some way" (R. 240a-241a), to an asserted effort "to find out if they were trying to get to me and who had authorized them to try" (R. 282a-283a).

In the course of these meetings, Vick kept trying to impress the Teamsters' representatives that he was a "big shot" with the Department of Justice, statements that, in addition to others made to gain their confidence, he admitted to have been completely untrue (R. 232a-236a, 246a).

Vick reached the point where he said, "You have only one problem left" (R. 306a), namely, his own pay-off; in his words at the trial, "My hands were itching" (R. 306a). Pressed to make a proposition, he asked for compensation for loss of a \$9,000 job for the next 20 years (R. 312a)—he was 39 years old at the time of the trial (R. 217a)—or a total of \$180,000 (R. 312a), plus \$36,000 to send his three sons through college at \$12,000 for each (R. 311a-312a), or a price for changing his testimony in the neighborhood of \$250,000 (R. 313a).



He itemized the elements making up this proposal in writing (R. 350a; Def. Ex. 2 for id.).

Vick reported to the F. B. I. that he could not make up his mind whether there had been a bona fide offer to him of \$250,000 (R. 339a), and on the stand he admitted (R. 345a-346a) that "I never could get them to do anything that I thought was really an overt act, to where I could really do something about it."

What Vick did not know (R. 337a) was that in these meetings the tables were turned; this time the people talking to him were carrying a tape recorder (R. 299a). The transcription of the Holiday Inn tape recording, in the course of which he named a price in the neighborhood of a quarter of a million dollars for testifying that he entrapped Osborn (R. 300a-314a), was read to him, and he admitted it was accurate (R. 314a).

Vick's testimony admitting the statements attributed to him came after he had been told that his conversations in which these statements had been made were tape recorded. When first asked about the same statements he said that the statement had been made "jokingly, if made" (R. 228a, 233a). That he had made "a lot of joking statements" (R. 233a), "may have jokingly said "that the Government had guaranteed education of his children (R. 234a), and had made other statements "just a little jokingly" (R. 235a). Faced with a tape recording, Vick claimed to have been making an investigation. "We were trying to catch some people we thought were going to offer me a bribe . . . and told these people anything that would encourage them . . ." (R. 236a). His efforts to prove the offering of a bribe were simply efforts to try to catch "him" (R. 244a; cf. 245a, 246a, 247a).

Vick also admitted that, some years back, he had attempted to bribe a city councilman (R. 349a).

In the course of Vick's cross-examination the following took place (R. 283a):

"Q. In other words, lying doesn't mean a thing to you?"

"A. If I am trying to find out information from people who are trying to get to me, no."

Vick was shown to have a bad reputation for truth and veracity (R. 600a, 602a, 604a, 606a, 608a, 609a).

#### **H. The Rebuttal Testimony of the District Judges and the Reception in Evidence of Vick's Affidavit.**

The Government was permitted, over objection, to adduce the testimony of District Judges Gray and Miller on rebuttal, after petitioner closed his defense, for the ostensible purpose of showing whether or not there was entrapment (R. 651a-652a). The testimony of the judges related the circumstances under which they authorized the tape recording by Vick, particularly concerning the fact that they had an affidavit from Vick (R. 651a-662a). Vick's affidavit, which the court had previously refused to admit into evidence (R. 407a-408a), was now received (Government Exhibit 17) over objections, and read to the jury (R. 653a-656a). The judges were permitted to express deep concern over the gravity of the offense charged (R. 657a-659a), and to voice the disbelief of the prosecutors in the charge of Vick (R. 658a, 660a). Therefore, they testified, they authorized the tape recording by Vick to determine what the truth was (R. 657a, 659a-660a). The objections of petitioner were overruled, as was his motion to strike the testimony (R. 661a-662a).

**I. Petitioner's Motion to Suppress.**

Petitioner filed a motion under Rule 41(e), F. R. Crim. P., to suppress the tape recording of his conversation with Vick on November 11, 1963, that Vick had obtained, and called Vick and other witnesses (R. 128a-153a). This was before Vick's *Jencks* statements had been turned over. Vick's testimony accordingly differed from what he testified to at the trial in significant particulars.

At the hearing on the motion to suppress, Vick said he had never discussed Elliott with anyone before talking to petitioner (R. 130a, 131a), specifically denying that he had discussed his relationship to Elliott with the United States Government (R. 131a); at the trial it was shown that he had informed the F. B. I. agent Sheridan of his relationship to Elliott a week before he was reemployed by petitioner (R. 348a-349a).

At the hearing on the motion to suppress, Vick said he never had any connection with the Department of Justice about his plan to supply information obtained by working for petitioner before November (R. 142a); at the trial it was shown that he had made reports to the Department in February, June, July or August, and October.

Following the hearing on the motion to suppress, and on the basis of the evidence adduced at that time, the trial judge ruled that, on the authority of the *Lopez* and *On Lee* cases [*On Lee v. United States*, 343 U. S. 747; *Lopez v. United States*, 373 U. S. 427], the tape recording was admissible; and that there was no entrapment, because Vick did not lure the petitioner into conversation but merely provided the opportunity, and because neither Vick nor the F. B. I. agents incited or created the offense (R. 153a).

**J. Motion for Judgment of Acquittal.**

At the conclusion of evidence of the Government's case in chief a motion for judgment of acquittal was made. ". . . and for the reason that the Government's proof shows conclusively that any actions of the defendant in this cause proven by the Government were in connection, not with any offense or violation of the law, but with regard to a pretended offense, originated, designed, prepared, mechanized, instituted and continued by agents of the United States Government, and for the reason that any connection or association with or participation in said pretended offense, or offenses, by the defendant was the result of deliberate, premeditated and detailed fashioned entrapment on the part of the agents of the United States Government." This motion was overruled (R. 435a-436a).

**K. The Charge Concerning Entrapment.**

In instructing the jury on the issue of entrapment, *inter alia*, the trial judge submitted as petitioner's contention that the tape recording was unlawfully obtained, and charged the jury that if they found against this contention they should find that there was no entrapment and return a verdict of guilty (R. 697a-698a).

**L. The Rulings Below.**

In respect of the issues on which review was granted here, the court below ruled as follows:

It held that the recording was admissible, citing, *inter alia*, *On Lee v. United States*, 343 U. S. 747, and *Lopez v. United States*, 373 U. S. 427, and then adding in a footnote (R. 56) that—

"In view of the strong dissent in *Lopez* (see *Lopez v. United States*, 373 U. S. at 446) to the



controlling rule described above, it may be relevant to note that the essentials of search warrant procedures were carried out in the instant case, albeit no statutory authority for such a warrant exists. These include appearance before a court, a showing of probable cause, a specific judicial authorization for the search, including a description of method and object."

On the entrapment issue, the court below quoted the entire recorded conversation, referred only glancingly to the prior conversations between Vick and the petitioner, and held that the jury was justified in finding that there was no entrapment and that the charge on entrapment was correct (R. 60-62).

The court below held further that, even though petitioner was acquitted on Count 2, the jury might still have considered the evidence pertaining to Count 2 on the issue of whether petitioner had an existing disposition to commit a similar offense, and that it was not error to refuse to instruct that the jury could not consider the testimony pertaining to Count 2 in the event that they rendered a not guilty verdict thereon (R. 65).

The court below further held that admission of the judges' testimony on rebuttal was not reversible error, and that Vick's affidavit was admissible as a prior consistent statement (R. 64-65).

Finally, the court below ruled that telling a third person to offer a bribe to a prospective juror constituted a corrupt "endeavor to influence" within 18 U. S. C. § 1503, and that "We do not believe that this act is insulated from prosecution by failure, or by lack of actual intent on the part of the third party ever to make the approach" (R. 59-60).

**SUMMARY OF ARGUMENT.**

I. *Olmstead v. United States*, 277 U. S. 438, *On Lee v. United States*, 343 U. S. 747, and *Lopez v. United States*, 373 U. S. 427, should be severally overruled, and the electronic recording made of petitioner's conversation should be held to have been obtained in violation of the Fourth Amendment's command against unreasonable searches and seizures. This view has had the support of many members of the Court, and need not now be further developed at length in view of the recent dissent in *Lopez*.

That case is in any event distinguishable, since there Davis was known to be a Federal officer, who explained the motive for his original visit, while here petitioner had not the slightest inkling that Vick, whom he had employed at the latter's solicitation, was in fact an F. B. I. informer wired for sound. Consequently when Vick gained access with his recorder what was recorded was illegally seized and used at the trial.

II. But even if the *Olmstead-On Lee-Lopez* line of decision stands, so that no constitutional question is involved, the recording should still be excluded, in the exercise of this Court's supervisory powers, because it was the fruit of judicial collaboration with the prosecution in the detection of crime.

Obtaining prior judicial approval for the carrying of the concealed recorder cannot be equated with search warrant procedure, first because Vick never announced the source of his authority, as officers executing search warrants invariably do; second because the results of his activities were immediately and informally disclosed to the judges in chambers rather than being submitted formally in connection with pre-

trial motions or normal trial procedure, as are the fruits of searches conducted pursuant to warrants regularly issued. Moreover, as the law stood, no imprimatur of judicial approval was necessary as a prerequisite to the admissibility of the recording.

Here there was complete confusion between the issue of illegally obtained evidence—the admissibility of the recording—and the issue of entrapment, which involved the completely unrelated question whether petitioner had acted because of the suggestions or solicitations of a Government agent. Those two issues are entirely distinct, but were improperly and erroneously intermingled throughout at the trial.

The prosecution overstepped proper limits when it showed the judges the information it had obtained and sought their approval for placing the recorder on Vick; the judges overstepped proper limits when they associated themselves with enforcement officers by authorizing and approving this further investigative step and later appearing as witnesses for the prosecution at the trial. In doing so, they stepped down from the bench into the arena.

In view of this impropriety, which strikes at the very fundamentals of judicial conduct, all evidence obtained by the prosecution in conformity with or pursuant to the judges' directions must be excluded. Judges simply have no business becoming advisers to and partners of the prosecution, a basic principle that this Court should implement by the exclusionary rule we urge.

III. The entrapment issue was erroneously handled in numerous respects.

A. To begin with, it should never have been submitted to the jury at all, on either one of two grounds.

First, there was entrapment here as a matter of law, because the record plainly shows that it was only *after* Vick, who admitted he was endeavoring to "make a case," and had sought employment with petitioner *for that sole purpose*, mentioned his cousin Elliott, that petitioner was tempted. This is plain from Vick's own testimony. What petitioner did was the product of Vick's creative activity. Because of its preoccupation with the last and recorded conversation, the court below quite failed to recognize that interchange as simply the last "part of a course of conduct which was the product of the inducement" (*Sherman v. United States*, 356 U. S. 369, 374).

Alternatively, if the rationale of the concurring opinion in *Sherman* be adopted, with its emphasis on the conduct of the police rather than on the predisposition of the accused, then there was entrapment because Vick set out to "make a case." It is an abuse of the power of government when that power is "employed to promote rather than detect crime and to bring about the downfall of those who, left to themselves, might well have obeyed the law" (*Sherman v. United States*, 356 U. S. 369, 378, 384). Police should investigate cases, not create cases.

B. Such a course is particularly indicated here, when evidence of predisposition rested on what petitioner was alleged to have done under Count Two about a year earlier—in respect of which he was acquitted. Consequently, on a retrial such evidence would be inadmissible, and as a matter of fairness petitioner is now entitled to a new trial on Count One wherein no evidence under Count Two on which he was acquitted would be competent. Of course, if the course urged by the concurring opinion in *Sherman* were adopted,



this question would not arise; predisposition would then not be in issue; only the conduct of the prosecution would then be material.

C. So much of the charge as left the jury to determine whether the tape recording was obtained by lawful means constituted plain error requiring reversal.

Not only did the trial judge leave to the jury the question of the lawfulness of the tape recording, he emphasized that the steps in this recording were "done with the specific approval of the Federal Judges of this District." Thus he confused admissibility with entrapment, improperly submitted a question of law to the jury, and then weighted it against petitioner by erroneously making it turn on the judges' prior approval.

Although not objected to, this portion of the charge was plain error; indeed, it was glaring and palpable error, and of such magnitude as to require reversal.

IV. It was additionally reversible error to permit the two judges to testify on rebuttal that they had authorized sending Vick to petitioner with a concealed recorder, and to admit Vick's affidavit as well.

Here again, there was confusion between admissibility and entrapment. None of the judges' testimony, which concerned only their authorization to Vick to carry the recorder, had the slightest bearing on whether or not there had been entrapment. *The recording was already in evidence, as well as the fact of the judges' authorization therefor.* Every word they said on the stand was plainly improper as rebuttal testimony.

Similarly, since the defense had not made the slightest suggestion that any part of Vick's lengthy testimony involved recent contrivance, Vick's affidavit, earlier excluded, was still inadmissible, since it simply

repeated what he had already said on the stand. The ruling below, that it became competent simply because he had been contradicted, is contrary to every other decision on the point.

Here the rebuttal testimony sealed petitioner's doom. It transformed what up to then had simply been a contest of veracity as to *prior unrecorded conversations* between an untrustworthy informer and a reputable professional man, because here the judges, who had already doffed the judicial robe to pin on the policeman's badge, simply gave opinion evidence of their belief in petitioner's guilt.

The details of their authorization to Vick were already in evidence. The fact that they had disbarred petitioner had similarly been made known to the jury. Yet here the judges were additionally—and improperly—permitted to tell the jury that they as judges were convinced of petitioner's guilt. The objection to their testimony should therefore have been sustained; overruling that objection requires reversal.

V. Inasmuch as Vick by his own testimony never had the slightest intention of ever approaching his cousin Elliott, anything that petitioner said to Vick was as ineffectual as if petitioner had uttered the same words to a blank wall.


Consequently this is a case of impossibility, which is well nigh universally recognized as a defense to a charge of criminal attempt, and which was specifically recognized as a defense to a violation of 18 U. S. C. § 1503 in *Ethridge v. United States*, 258 F. 2d 234 (C. A. 9).

*United States v. Russell*, 255 U. S. 138, is not to the contrary; that decision simply holds that "endeavor" in the statute is broader than "attempt," and

that use of the former word was designed to eliminate discussions over preparation and the like. The *Russell* case did not involve and so did not decide any issue of impossibility.

While the American Law Institute's Model Penal Code, § 5.01(1)(a), does propose to eliminate impossibility as a defense to a charge of attempt, that would change existing law, as indeed a recent case reluctantly recognizes. *Booth v. State*, 398 P. 2d 863 (Okla. Cr.).

As the law now stands, petitioner did not violate § 1503. In view of the uncontradicted proof that Vick never had the slightest intention of acting on whatever petitioner said, indeed could not since the Government had been told of Vick's relationship to this juror *before* Vick ever mentioned him to petitioner, the indictment here must be dismissed.



**ARGUMENT.**

This is a disturbing and deeply troubling case.

It presents once again, indeed it cries out for a re-examination of, the doctrine that holds electronic eavesdropping to be consistent with the Fourth Amendment's prohibitions against unreasonable searches and seizures. For, despite *Olmstead v. United States*, 277 U. S. 438, and its progeny, *On Lee v. United States*, 343 U. S. 747, and *Lopez v. United States*, 373 U. S. 427, the classic dissent of Mr. Justice Brandeis in *Olmstead* and his prediction of how privacy will be taken away "by a contrivance of modern science," continues to disquiet all who believe that, just as the Commerce Clause drafted in 1787 is amply broad enough to authorize the regulation of television, so the Bill of Rights adopted in 1791 protects not only against physical Eighteenth Century intrusions into the closet but also against mid-Twentieth Century electronic surveillance of conversations.

Nor is this all. Here the agent wired-for-sound was sent to take down petitioner's words, not by enforcement agents as in *Lopez*, but by two United States district judges. However serious the offenses of obstructing justice denounced by the section of which petitioner stands convicted, here the methods of detection used, where members of the bench have actually stepped down into the arena to track down offenders on their own, seem to us to involve an infinitely more serious impairment of the administration of justice, and one that is vastly more disturbing in its implications.

More than that, it is doubtful in the extreme whether petitioner's incautious—and admittedly im-



proper—remarks to an informer, who never had the slightest intention of acting on those remarks except to convey them to the F. B. I. and “make a case” against the petitioner, add up to a violation of the statute. Petitioner has already been grievously and severely punished for his indiscretions by disbarment from his chosen profession, in which he had previously been both successful and respected.<sup>1</sup> Now, however, he faces in addition three and a half years of penitentiary confinement.

All of the foregoing issues are intertwined in the present case, and we propose to show how, at critical junctures in the proceedings below, they were prejudicially confused. To that end we deal separately with the issues of search-and-seizure, judicial participation in the collection of evidence, entrapment and the content of the offense charged—in that order.

**I. The Electronic Recording of Petitioner's Conversation Was Obtained in Violation of the Fourth and Fifth Amendments, and Should Therefore Have Been Excluded.**

Here petitioner has specifically urged (Questions 2 and 3, Pet. 2; Pet. 16, 18) that the *Olmstead*, *On Lee*, and *Lopez* cases be squarely overruled, and that the carrying of a concealed recording device, of which a party is ignorant, in order to obtain statements from such party on which to institute a criminal prosecution, be held to constitute an unreasonable search and seizure in violation of the Fourth Amendment. Moreover (Question 2, Pet. 2), in addition to forfeiting his right

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1. As a matter of possible interest, he participated in both arguments of *Baker v. Carr*, 366 U. S. 907, 369 U. S. 186, on behalf of the petitioners there.

of privacy, a person is thereby compelled to be a witness against himself, in violation of the Fifth Amendment, when incriminating conversations are secretly taken from him by a contrivance of modern science such as was used here to be played at his trial.

There is no need for us to lengthen the present brief with apt quotations from earlier opinions making the same point, the more so since all the relevant considerations have been so very recently canvassed and collected. *Lopez v. United States*, 373 U. S. 427, 446-471 (dissent). The view of the Fourth Amendment that we urge has had the support of many members of this Court, as the following enumeration will disclose:

*Olmstead v. United States*, 277 U. S. 438, 471 (Brandeis, J.), 485 (Butler, J.), 488 (Stone, J.).<sup>2</sup>

*Goldman v. United States*, 316 U. S. 129, 136 (Stone, C. J., and Frankfurter, J.), 136 (Murphy, J.).

*On Lee v. United States*, 343 U. S. 747, 758 (Frankfurter, J.), 762 (Douglas, J.), 765 (Burton, J.).

*Lopez v. United States*, 373 U. S. 427, 446 (Brennan, Douglas, and Goldberg, JJ.).

If it be necessary to distinguish the *Lopez* case, there is no difficulty: There the petitioner knew Davis to be a Federal officer. Here the petitioner had not the slightest inkling that Vick, whom he had employed in October 1963 at the latter's solicitation, had in fact been an informer reporting to the F. B. I. since February of the same year (*supra*, pp. 6-8).

Consequently, see *Lopez* at 437, Vick gained access with his recorder by misrepresentation, so that what

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2. Holmes, J., is not included; he said (p. 469): "While I do not deny it, I am not prepared to say that the penumbra of the Fourth and Fifth Amendments covers the defendant, although I fully agree that Courts are apt to err by sticking too closely to the words of a law where those words import a policy that goes beyond them."

was recorded was illegally seized; accordingly, *Gouled v. United States*, 255 U. S. 298, which was inapplicable there, governs the present case. In *Gouled* the Court said at pp. 305-306:

“The prohibition of the Fourth Amendment is against all unreasonable searches and seizures and if for a Government officer to obtain entrance to a man’s house or office by force or by an illegal threat or show of force, amounting to coercion, and then to search for and seize his private papers would be an unreasonable and therefore a prohibited search and seizure, as it certainly would be, it is impossible to successfully contend that a like search and seizure would be a reasonable one if only admission were obtained by stealth instead of by force or coercion. The security and privacy of the home or office and of the papers of the owner would be as much invaded and the search and seizure would be as much against his will in the one case as in the other, and it must therefore be regarded as equally in violation of his constitutional rights.”

True, petitioner admitted Vick to his office, obviously Vick did not secretly enter without petitioner’s permission, but petitioner did not admit Vick as a wired-for-sound informer *with a recorder* to secretly record their conversations.

We recognize that in *Lopez v. United States*, 373 U. S. at page 450, Justice Brennan with whom Justice Douglas and Justice Goldberg joined dissenting stated:

“That is not to say that all communications are privileged. On Lee assumed the risk that his

acquaintance would divulge their conversation; Lopez assumed the same risk *vis-à-vis* Davis."

Petitioner may have assumed the risk that his conversations with Vick would be divulged—but not the risk that the conversations would be recorded. There is a great difference between an informer for the Government whose job is to *merely inform* and an informer who makes recordings of conversations that he instigates. The risk is as was stated in *Lopez* "of a different order."

" . . . It is the risk that third parties, whether mechanical auditors like the Minifon or human transcribers of mechanical transmissions as in *On Lee*—third parties who cannot be shut out of a conversation as conventional eavesdroppers can be, merely by a lowering of voices, or withdrawing to a private place—may give independent evidence of any conversation. There is only one way to guard against such a risk, and that is to keep one's mouth shut on all occasions." 373 U. S. 450.

But perhaps the factor which should most incline to an overruling of the *Olmstead-On Lee-Lopez* doctrine is the use that was made of it here, where the hidden recorder was used, not at the instigation of law enforcement officers, but with the specific and affirmative approbation of two United States District Judges, who thus became active participants in the business of apprehending suspected offenders.

A doctrine that lends itself to such an extension cannot be sound. We submit it cannot be squared with the commands of the Constitution.



**II. Even Under the *On Lee* and *Lopez* Cases as They Stand, the Recording Should Have Been Excluded Because It Was Obtained at the Direction of Two United States District Judges.**

But even if the Court declines to overturn the *Olmstead* case and its subsequent reaffirmation in *On Lee* and *Lopez*, so that no constitutional question is involved, this recording should still be excluded, in the exercise of the Court's supervisory powers over the administration of justice: It is not for the judiciary to become partners with the F. B. I. in the detection of suspected wrongdoing.

*First.* Here the court below held the recording admissible on the basis of *Lopez*, of *On Lee*, and of cases in other circuits resting on those decisions. We do not, indeed we cannot, quarrel with that; in any lower Federal court those two decisions were plainly binding; and in the court below we put forward our present constitutional contention essentially to preserve petitioner's position in the event of affirmance.

But, citing *Lopez* and *On Lee*, the court below added a footnote (R. 56), as follows:

"In view of the strong dissent in *Lopez* (see *Lopez v. United States*, 373 U. S. at 446) to the controlling rule described above, it may be relevant to note that the essentials of search warrant procedure were carried out in the instant case, albeit no statutory authority for such a warrant exists. These include appearance before a court, a showing of probable cause, a specific authorization for the search, including a description of method and object."

Whenever any essential link in an argument is thus dropped down from text to footnote, there has been flashed the infallible signal of untenable reasoning. Indeed, that suggestion, that what was done here could be equated with the issuance of a search warrant, is not only a wholly insufficient make-weight, it makes a mockery of the solemn procedure required by the Fourth Amendment.

For, quite apart from the admitted lack of statutory authority for a warrant in the present case, what was done here differed in two vital respects from recognized search warrant procedures.

1. When an officer of the law serves a warrant, he announces to all and sundry his possession of such a warrant before proceeding to execute that source of his authority. Here, very plainly, Vick never disclosed that he was a Government agent, much less that he was wired for sound. Consequently it is impossible to analogize the present situation to one where a search warrant has been issued. For search warrants are executed by persons who proclaim both their official status plus the additional *ad hoc* authority that the warrant confers upon them.

2. When a search warrant is duly issued by a court upon a showing of probable cause, the results of the search are retained by those charged with the enforcement of the law. Thereafter the fruits of that lawful search are presented to the grand jury, if an indictment is sought, or to the prosecutor, if the proceeding is by way of information.

In no instance involving use of a search warrant is the evidence obtained through execution of the warrant ever seen by the judge until it comes before him in due

course, either by motion to suppress, or by motion to dismiss the indictment, or in the course of the trial.

Here, however, the fruits of Vick's wiring-for-sound were immediately played back to the two judges, as though the judges themselves were part of the prosecutorial staff.

*Second.* Under the *On Lee* and *Lopez* cases, and they were law when Vick on three occasions carried a concealed recorder on his person into petitioner's office, such use was legal and constitutional, requiring no further approval from any source. The decoy in *On Lee* proceeded under orders from narcotic agents, the revenue agent in *Lopez* was acting under the orders of his immediate superiors in the Internal Revenue Service. Under the rule of those cases, therefore, and as long as they stood, the fruits of Vick's hidden device would have been admissible either if he had carried the recorder on his own, or if he had carried it at the suggestion or direction of the F. B. I. or of anyone else in the Department of Justice. Under those decisions, in short, no imprimatur of judicial approval was necessary as a prerequisite to the admissibility of the recording.

*Third.* It is important to distinguish here between the issue of illegally obtained evidence, which involves the admissibility of the recording, and the issue of entrapment, which involves the completely unrelated question whether petitioner was induced to do what he did because of the suggestions or solicitations of a Government agent.

The trial judge badly confused the two, saying (R. 560a), "This entrapment doctrine relates to evidence, the reception of illegal evidence."

Not so; the two are wholly distinct. Thus, in *Sorrells v. United States*, 287 U. S. 435, and again in *Sherman v. United States*, 356 U. S. 369, there was entrapment without the use of any recorder; while in *On Lee v. United States*, 343 U. S. 747, a recorder was used without the slightest suggestion of entrapment. Similarly, in *Lopez v. United States*, 373 U. S. 427, the primary issue concerned the use of the recorder, so much so that the defendant at the trial did not even request any instruction concerning entrapment.

Or, otherwise stated, there can be entrapment without the slightest suggestion that illegally obtained evidence infects the commission of the acts for which a defendant is prosecuted; and there can be a question concerning the propriety of using electronic recordings in a case that does not even remotely suggest entrapment.

We stress this fundamental differentiation because it was ignored, not only in the course of the trial at the point indicated (R. 560a, just quoted), not only in the improper admission of the prosecution's rebuttal evidence (Point IV, *infra*, pp. 46-51) and in the erroneous charge (Point IIIC, *infra*, pp. 44-50), but also in the improper injection of the judiciary into the search for crime conducted by the Department of Justice and the F. B. I.

*Fourth.* The Department of Justice overstepped proper limitations when, before its investigation had been completed, it informally showed the district judges in chambers the evidence it had already collected, and sought their approval for the next stage of investigation and for the placing of the recording device on their decoy, Vick.

The two district judges overstepped proper limitations when they associated themselves with the prose-



cuting and law enforcement officers by authorizing and approving this further investigative step.

As we have said (Pet. 16), here "members of the bench have actually stepped down into the arena to track down suspected offenders on their own." They are not excused, as the prosecution seeks to argue (Br. Op. 8), because "They did not then manifest any conviction that petitioner was guilty; indeed, their testimony indicates that they shared government counsel's skepticism as to the truth of Vick's allegations."

The vice was, not that they formed any views concerning petitioner's guilt or innocence, it was that they left the judicial bench to participate in, by authorizing further steps in, the investigation of petitioner's conduct.

This is more than an abstraction stemming from the doctrine of separation of powers, this goes to the very fundamentals of judicial conduct.

True, the present is not a situation where a judge has a pecuniary interest in the outcome of a trial (*Tumey v. Ohio*, 273 U. S. 510), or an emotional involvement (*Offutt v. United States*, 348 U. S. 11), or one where he has been first the accuser and then the Judge (*In Re Murchison*, 349 U. S. 133). Rather, the impropriety is inherent in the judges allying themselves with the prosecutory and investigatory agencies of the Government, in their participation in investigation, in their authorization of further investigatory steps.

We submit, therefore, that any evidence obtained by the prosecution in conformity with or pursuant to the judges' directions must be excluded for that reason. Consequently, even on the assumption that *On Lee* and *Lopez* were correctly decided, so that no constitutional question is involved, the recording obtained

by Vick must still be excluded, because it was the result of a step directed by the judges—who simply have no business becoming advisers to and partners of the prosecution.

Every lawyer who has ever practiced in small communities, or even in larger ones where there are but few judges, believes that the intangible against which it is well-nigh impossible to defend is the close contact between the United States Attorney and the United States District Judge. What is said and done is usually beyond possibility of proof; and even if it were not, the individual practitioner cannot realistically speaking take steps to combat or even to discourage this course of conduct.

Accordingly, this Court should rule, in the exercise of its supervisory powers, that evidence obtained by law enforcement officers of the United States at the direction and with the collaboration of United States judges is the fruit of improper judicial conduct, and therefore inadmissible. In this view the recording obtained by Vick should have been excluded at the trial quite apart from constitutional considerations.

### **III. The Entrapment Issue Was Erroneously Handled in Numerous Respects.**

The entrapment issue was treated incorrectly below, in no less than three separate aspects.

#### **A. The Issue of Entrapment Should Not Have Been Submitted to the Jury at All.**

We propose to argue, on alternative grounds, that the issue of entrapment here should never have been submitted to the jury at all.

*First.* Here there was entrapment as a matter of law, an assertion fully borne out by careful study of this record.

To begin with, Vick is shown to have been a particularly loathsome specimen of that generally unappetizing character, the *agent provocateur*.

He admitted an earlier attempt to bribe a public official, a city councilman (R. 349a), and the prosecution did not, no doubt because it could not, seek to contradict his bad community reputation for truth and veracity (R. 600a-609a).

Much of Vick's cross-examination here demonstrated in detail how he offered to change his testimony regarding petitioner if only he were guaranteed a pension for himself plus an educational fund for his children, which in his aggregate came to a quarter of a million dollars (R. 300a-313a); his evidence shows how disappointed he was when that offer did not tempt his listeners (R. 345a-346a). Vick's engagement to help the F. B. I. in order to insure his own "clean bill of health" (R. 215a, 220a, 224a-225a) was limited to reporting "illegal activity" (R. 216a, 224a-226a), a limitation that understandably did not incline him to reporting merely innocent action.

Vick's uncontradicted testimony was that (R. 266a) "I was trying to find out what Mr. Osborn's intentions were and prove it, and make a case," and that he himself never had the slightest intention of ever approaching his cousin Elliott (R. 132a-133a, 135a, 136a, 140a, 263a).

Before Vick mentioned his cousin, petitioner had been meticulous in warning his investigators not to contact jurors personally (R. 460a, 462a, 508a, 596a-597a); it was only after Vick's mention of his cousin Elliott that petitioner was tempted.

It is entrapment, this Court has said, when criminal conduct is "the product of the creative activity of law enforcement officials." *Sherman v. United States*, 356 U. S. 369, 372; *Sorrells v. United States*, 287 U. S. 435, 441, 445. It is entrapment when "the criminal design originates with the officials of the Government, and they implant in the mind of an innocent person the disposition to commit the alleged offense and induce its commission in order that they may prosecute." *Sorrells* at 442. Otherwise phrased, "the Government cannot be permitted to contend that he is guilty of a crime where the government officials are the instigators of his conduct." *Sorrells* at 452. It is entrapment when "the Government plays on the weaknesses of an innocent party and beguiles him into committing crimes which he otherwise would not have attempted." *Sherman* at 376.

We have precisely such a case of entrapment here, on the uncontradicted evidence of Vick himself. Vick offered to report as an informer in return for a "clean bill of health" from the F. B. I., and to be "protected from prosecution," and these two desires combined into what he frankly admitted on the stand was a fixed desire to "make a case" against petitioner.

On three separate occasions after Elliott's name had first been mentioned—on November 7, on November 8, and on November 11 when the concealed recorder finally worked, Vick went to petitioner and talked about his cousin Elliott, saying that Elliott was receptive. Just as a Stern or a Menuhin can by skillful manipulation of a horsehair bow evoke magnificent music out of a Stradivarius violin, so Vick by repeating his admittedly false accounts of non-existent conversations with Elliott, and by repeating equally false recitals of Elliott's susceptibility, was able to extract



language from petitioner in pursuance of his own plan "to find out what Mr. Osborn's intentions were and prove it, and make a case" (R. 266a).

If regard be had to whether a defendant had criminal proclivities for which the government agent simply offered him an opportunity, or whether, on the contrary, it was the efforts of the agent playing—and preying—upon the defendant to beguile him into committing an offense that but for the agent's suggestions he would never have attempted, this case, we submit, falls clearly into the second class. This case, accordingly, establishes entrapment as a matter of law.

When Vick told petitioner that a juror on the panel was his cousin, it was not simply a matter of factual reporting, it was—in Vick's own words—an instance of "trying to find out what Mr. Osborn's intentions were" (R. 265a). This is significant because it establishes well nigh conclusively that petitioner never expressed the slightest intention of tampering with jurors—the evidence is uncontradicted that petitioner strongly warned Vick and his other investigators against the slightest improprieties—until Vick told him that his cousin was on the panel. Unhappily petitioner succumbed to this entrapment.

We submit that the power of Government is abused when, instead of being used to prevent crime and lawlessness, it is as here employed to promote crime by tempting people to commit unlawful acts.

We do not believe it is necessary, nor would it be helpful, to undertake a review of the unfortunately increasing number of reported cases that turn on resolution of the question whether the notion of committing particular crimes originated with officers of the law, whether those who should be preventing and detecting crime are instead devoting their efforts to manufactur-

ing and suggesting and inviting its commission. All of those cases turn on their facts, and the inquiry in every instance is the same: Was the offense charged in fact "the product of the *creative activity*" of law enforcement agencies and their members.

We think that when attention is focused on that question here, it will appear beyond any troubling doubt that what petitioner was recorded to have said, was evoked by Vick's repeated harping on the double lie that he had spoken to Elliott and that Elliott was itching to get money for hanging the jury.

In that connection it is significant that the court below concentrated on the recorded conversation that was the last of the series dealing only glancingly with the numerous conversations preceding it (R. 61). This was plainly erroneous, inasmuch as the last conversation was simply "part of a course of conduct which was the product of the inducement" (*Sherman v. United States*, 356 U. S. 369, 374).

When regard is had to the progression of events, it is clear that what petitioner ultimately said was indeed "the product of the *creative activity*" of the informer Vick. In that sense the act for which petitioner was charged in the indictment and was convicted was the necessary, foreseeable, and proximate result of Vick's artfully conceived entrapment that beguiled petitioner "into committing crimes which he otherwise would not have attempted" (*Sherman*, 356 U. S. at 376), into uttering words for which he was indicted, and in respect of which he now stands convicted.

All this appeared from the uncontradicted testimony of the prosecution witness Vick himself, the man who undertook to "make a case" against petitioner. Accordingly, petitioner's motions for acquittal, made at the close of the prosecution's case (R. 435a-436a)

and renewed at the close of the entire case (R. 660a-661a) should have been granted.

*Second.* There is another and alternative road to the conclusion that the issue of entrapment here should not have been left to the jury.

That road requires rejection of the rationale of the Court in *Sherman v. United States*, 356 U. S. 369, which holds that entrapment is to be submitted to the jury in the light of the defendant's conduct and predisposition, and the adoption instead of the view set forth in the concurring opinion in that case (356 U. S. at 378-385), which leaves to the court as a matter of law the appraisal of the conduct of the police. For, as was there said (p. 384),

"The power of government is abused and directed to an end for which it was not constituted when employed to promote rather than detect crime and to bring about the downfall of those who, left to themselves, might well have obeyed the law."

In this connection, we refer to a recent thoughtful and scholarly study, "*The Serpent Beguiled Me and I Did Eat*"—*the Constitutional Status of the Entrapment Defense*, 74 Yale L. J. 942.

**B. Petitioner's Acquittal on Count Two Eliminates All Evidence of Previous Disposition on His Part.**

Under the prevailing opinion in *Sherman*, where the emphasis is on the defendant's conduct rather than on that of the police, it is one of the essential elements of entrapment that the defendant had no predisposition to violate the law, and, contrariwise, that entrapment is not established if the defendant was engaged in similar crimes. The trial judge so charged (R. 697a), without objection on petitioner's part (R. 708a).

In this case, Count Two of the Indictment (R. 8a) charged commission of a similar offense, about a year earlier than the one of which petitioner was convicted (R. 7a), through one Beard, to approach the husband of juror Harrison. Considerable evidence bearing on that count was introduced at the trial. In addition, the prosecutors' closing arguments referred extensively to the Beard-Harrison matter as tending to show petitioner's criminal predisposition (R. 667a-670a, 673a-677a, 682a-684a).

Thus, in their view, and, it may well have been, in the view of the jury, petitioner could not have been entrapped because some of the evidence bearing on his actions respecting the matters alleged in Count Two, a year earlier, reflected either a previous disposition to violate the law or else his participation in similar crimes.

But, by their verdict, the jury acquitted petitioner on Count Two (R. 734a-735a), thus establishing that he did not approach Beard with reference to juror Harrison as there alleged:

This circumstance introduces a significant variant.

Of course it is hornbook law that, whenever intent is an element of the crime charged, evidence that the defendant committed similar offenses is admissible to prove intent. 2 Wigmore, *Evidence* (3d ed. 1940) §§ 300-370 ("Other Offenses or Similar Acts, as Evidence of Knowledge, Design, or Intent").

Suppose, however, that (as here) one of the earlier offenses introduced in evidence to show intent has gone to trial and has resulted in an acquittal; is the situation then different?

The court below thought not; it said (R. 66) that "We do not believe that the judge's refusal to



instruct that the jury could not consider the testimony pertaining to Count Two (in the event they rendered a Not Guilty verdict thereon) was error."

This is assertion, without more. Contrariwise, a recent and thoroughly reasoned case, *State v. Little*, 87 Ariz. 295, 350 P. 2d 756, holds that evidence of any prior offense which resulted in acquittal is inadmissible. We submit that, on principle, this decision is correct.

An acquittal, after all, is a judgment as between the prosecution and the defendant that he never committed the act charged. A second attempt to try the defendant on the ground that he was really guilty and that the first jury never clearly understood the case would, obviously, run afoul of double jeopardy. Why then should the prosecution be free to use any evidence tending to show the defendant's guilt on the first occasion (in respect of which he stands acquitted) in order to show a guilty predisposition on his part in respect of a second occasion?

Consequently, at the very least, petitioner is entitled to a new trial on Count One, in which no evidence of alleged criminal predisposition based on matters alleged in Count Two would be admissible, inasmuch as all such latter evidence related to a matter in respect of which he has been finally and irrevocably acquitted.

But we cannot forbear to say that this problem would not have arisen, and could not hereafter arise, if alleged predisposition were put to one side as urged in the concurring opinion in *Sherman v. United States*, 356 U. S. 369, 378, and if the trial court were to determine the issue of entrapment *vel non* as a matter of law in the light of the prosecution's conduct.

**C. So Much of the Charge as Left the Jury to Determine Whether the Tape Recording Was Obtained by Lawful Means Constituted Plain Error Requiring Reversal, as That Was a Question of Law for the Trial Court.**

In his charge on entrapment (R. 697a-698a), the judge concluded as follows (R. 698a) :

“If on the other hand, you find on the facts and circumstances of this case and on the instructions as here given you by the Court that the evidence aforesaid, including the tape recording, was obtained by lawful means, that is, that there was no unlawful entrapment, you will find this particular issue against the defendant and your verdict on Count One would be for the Government.”

The trial judge also charged (R. 701a) :

“The Government further contends that on each occasion when Vick was equipped with the recorder, this was done with the specific approval of the Federal Judges of this District. Thereafter Robert Vick on November 11, 1963, and pursuant to the specific authorization of the Federal Judges, had a conversation with the defendant Osborn in which the proposed bribe to prospective juror Elliott was discussed.”

There was no objection to the charge as given (R. 708a), but we think that the foregoing amounts to plain error within Rule 52(b), F. R. Crim. P.

Whether the recording was admissible was a pure question of law, with which the jury was not concerned, and which it was not competent to answer. Whether, on the other hand, there was unlawful entrapment,

was a question, essentially of fact, concerning the extent to which petitioner's acts were "the product of the creative activity of law-enforcement officials" (*Sherman v. United States*, 356 U. S. at 372), a question under that decision to be decided by a properly instructed jury. But that latter question, as we have already shown, was completely unrelated to the evidentiary issue posed by the wire recording.

By confusing the two issues in the first extract quoted from his charge, the trial judge made the issue of entrapment turn on whether the recording was lawfully obtained; and then, in the second extract, plainly indicated to the jury that it was—because, forsooth, it had been authorized by "the specific approval of the Federal Judges of this District."

This was not only plain error, it was glaring and palpable error, and error of such magnitude as to require reversal.

**IV. It Was Prejudicial Error to Permit the Two Federal Judges to Testify on Rebuttal That They Had Authorized Sending Vick to Petitioner With a Concealed Recorder, and to Admit Vick's Affidavit.**

We have already on several occasions adverted to the manner in which the trial judge confused the issue whether the recording was lawfully obtained by Vick's carrying of the concealed device—the question of admissibility—with the issue whether what petitioner did was the result of the creative activity of the Government's agent Vick, the wholly unrelated question of entrapment.

On rebuttal, however, these two issues were confused and combined to petitioner's utter prejudice. We shall restate the circumstances, point out the rules of

law that were thereby violated, and then show how such violations irrevocably prejudiced petitioner's case.

*First.* After the defense rested, the prosecution offered by way of rebuttal the testimony of the two United States District Judges for the Middle District of Tennessee, Judges Gray and Miller, such testimony to be confined "to the proposition of whether there was any entrapment" (R. 651a), the prosecutor saying that (R. 652a) he wanted "to show what information the Government had at the time the tape recording was authorized." Both judges testified over petitioner's objection (R. 651a, 652a, 655a-656a, 658a), and a motion to strike their testimony was denied (R. 661a-663a). There was also offered on rebuttal, and read to the jury, an affidavit by Vick (R. 653a-655a); this also was objected to (R. 653a, 655a), and although the prosecution was agreeable to a limiting instruction in respect of the affidavit (R. 662a), none was given.

*Second.* The judges testified to authorizing Vick to carry the recorder, and Vick's affidavit was offered and admitted to show what had been before the judges when such authorization was given (R. 651a-660a). Without repeating what we have already argued at length, none of this had the slightest bearing on the issue of entrapment. The recording had already been admitted (Govt. Ex. 12, R. 212a, 741a-749a), Vick had testified at great length concerning all of his conversations with petitioner (R. 191a-350a), and no contention of recent contrivance had been even whispered in respect of any of his testimony.

Plainly, therefore, nothing in the rebuttal testimony had the slightest bearing on the issue in respect of which it was offered, the issue of entrapment.



*Third.* Moreover, what the judges said was not rebuttal evidence because their authorization for Vick to carry a concealed device *was already in evidence for all purposes* (R. 383a-385a). Therefore, see 6 Wigmore, *Evidence* (3d ed. 1940) § 1873, "the usual rule will exclude *all evidence which has not been made necessary by the opponent's case in reply.*"

*Fourth.* Vick's affidavit, originally offered as part of the prosecution's case in chief after he had testified at length, was then excluded (R. 406a-408a). Whatever may have been the situation had Vick himself been called as a rebuttal witness subject to further cross-examination, whatever may have been the situation had the affidavit been offered to rebut a contention that Vick's trial testimony was a recent contrivance, here it was offered—and received—for the truth of the matter asserted, without even the limiting instruction that the prosecution was willing to accept (R. 662a). This, very obviously, was error; specifically, there is no support anywhere for the notion of the court below that the affidavit became automatically admissible simply because Vick had been contradicted (R. 65). 4 Wigmore, *Evidence* (3d ed. 1940) §§ 1122-1132; *United States v. Sherman*, 171 F. 2d 619, 622 (C. A. 2); *Mosson v. Liberty Fast Freight Co.*, 124 F. 2d 448, 450 (C. A. 2); *United States v. Toner*, 173 F. 2d 140, 142-143 (C. A. 3); *Schoppel v. United States*, 270 F. 2d 413, 417 (C. A. 4); *Mellon v. United States*, 170 F. 2d 583, 585 (C. A. 5); *Bartley v. United States*, 319 F. 2d 717, 719-720 (D. C. Cir.) (same rule with statutory basis).

Indeed, the untenable theory on which this affidavit was offered and received is underscored by the prosecution's indication that it represented "merely

the information upon which the government acted" (R. 662a). On that view, which quite ruled out rebutting recent contrivance, it was totally inadmissible for any purpose, since it simply repeated in writing what Vick had already said on the stand.

*Fifth.* It is impossible to brush off the rebuttal testimony, as the court below sought to do (R. 65), as a matter within the permissible limits of the trial judge's discretion, on a par with the prosecution witness Sheridan's supplemental testimony (R. 358a, 359a). For here the rebuttal testimony, actually irrelevant to any issue raised by the defense, was the blow that sealed petitioner's doom.

When the defense rested, the jury was dealing with a contest between petitioner, a professional man of reputation, and Vick, an untrustworthy and essentially slimy character. No doubt the prosecution recognized its dilemma, and so felt impelled to bring up its heaviest artillery. So they offered Judge Gray of the Middle District as a witness in his own courtroom (R. 651a) to say that he had authorized the tape and the investigation "to determine whether it was true or false" (R. 657a). He pronounced his deep concern, and acknowledged that the prosecutors had earlier told him they did not believe the charge (R. 658a).

Next, Chief Judge Miller was brought to the stand to acknowledge his part in the matter, and to say (R. 659a-660a):

"The affidavit contained information which reflected seriously upon a member of the bar of this court, who had practiced in my court ever since I have been on the bench. I decided that some action had to be taken to determine whether this information was correct or whether it was false.

It was the most serious problem that I have had to deal with since I have been on the bench.

"I could not sweep it under the rug.

"So I therefore decided that the best course to take was to allow a tape recorder to be used which would either clear this man or would prove that he was guilty. So I did authorize it.

\* \* \*

"I said on that second occasion the same as I did on the first occasion: that the tape recorder should be used under proper surveillance, supervision, to see that it was not faked in any way, and to take every precaution to determine that it was used in a fair manner, so that we could get at the bottom of it and determine what the truth was."

Plainly, this was not rebuttal testimony. This was opinion evidence by judges (who earlier had already doffed the judicial robe and pinned on the policeman's badge) that in their opinion petitioner had been proved guilty. The details of the judges' earlier hearings to inquire into petitioner's conduct had already been spread at length on the record (R. 371a-434a). The fact that they had disbarred petitioner was made known to the jury (R. 510a). Now they testified once more, not on any issue raised by the defense, not on any issue properly before the jury, but only to advise the jury that they as judges who had disbarred petitioner were convinced of petitioner's guilt. The integrity of the truth determining process at trial was thereby undermined.

We have shown that, as a matter of unquestioned law, the judges' rebuttal testimony was incompetent. But even if a stronger case could be made for the competence of that testimony than the rules of evi-

dence justify, it should still have been excluded. For, as Mr. Justice Cardozo said for the Court in *Shepard v. United States*, 290 U. S. 96, 104:

“Discrimination so subtle is a feat beyond the compass of ordinary minds. The reverberating clang of those accusatory words would drown all weaker sounds. It is for ordinary minds, and not for psychoanalysts, that our rules of evidence are framed. They have their source very often in considerations of administrative convenience, of practical expediency, and not in rules of logic. When the risk of confusion is so great as to upset the balance of advantage, the evidence goes out. Thayer, *Preliminary Treatise on the Law of Evidence*, 266, 516; Wigmore, *Evidence*, §§ 1421, 1422, 1714.”

**V. Inasmuch as Vick Never Had the Slightest Intention of Approaching His Cousin Elliott, Nothing That Petitioner Said to Vick Amounted to a Violation of 18 U. S. C. § 1503.**

Finally, the undisputed testimony of the informer Vick makes it plain that, under currently accepted principles of criminal law, petitioner committed no offense.

*First.* Vick, who was spying unbeknownst (R. 139a, 450a, 456a, 457a, 463a) on the employer from whom he had solicited work on a representation of financial need (R. 129a, 220a-221a, 225a, 259a, 260a, 273a), never had the slightest intention of seeing or talking to or approaching his cousin, the jury panel member Elliott, along the lines that after numerous interviews petitioner was stimulated to suggest (R. 132a, 135a, 138a, 139a-140a, 260a-263a, 265a).

Consequently here the "approach" was solicited by an informer who had determined in advance that he would never go near his cousin who was on the jury panel, and who indeed was in constant touch with the Department of Justice both *before* and after his meetings with petitioner.

That being so, all that was involved here on petitioner's part was guilty intent. So far as the effect on any member of the jury panel was concerned, so far as any approach to a juror was concerned, petitioner might with equal effect on the administration of justice have talked to a wall in his law office. If that wall indeed had been wired for sound, as indubitably the informer Vick was, the two situations would have been identical.

*Second.* Accordingly, this case is identical with those that hold that impossibility precludes conviction for criminal attempt, whether such impossibility be legal or factual.

Examples of the first category are cases holding that when a person accepts goods that he believes to have been stolen but that were not then stolen goods, he cannot be convicted of an attempt to receive stolen goods (*People v. Jaffe*, 185 N. Y. 497, 78 N. E. 169; *Booth v. State*, 398 P. 2d 863 (Okla. Cr.)); that it is not an attempt to commit a forgery where the instrument in question is void on its face and so cannot possibly operate to the prejudice of another (*Wilson v. State*, 85 Miss. 687, 38 So. 46); that an official who contracted a debt that was unauthorized and a nullity, but which he believed to be valid, can not be convicted of attempting illegally to contract a valid debt (*Marley v. State*, 58 N. J. L. 207, 33 Atl. 208); and that it is not an attempt to suborn perjury when the testimony



in question would not have been material and so could not have amounted to perjury (*People v. Teale*, 196 N. Y. 372, 89 N. E. 1086).

Examples of factual impossibility are decisions holding that it is not an attempt to commit murder when the prisoner discharges a pistol without a priming mechanism (*Regina v. Gamble*, 10 Cox C. C. 545); that it is not an attempt to poison when the substance used is non-poisonous (*State v. Clarissa*, 11 Ala. 57); that it is not an attempt to shoot deer out of season when the hunter shoots at a stuffed deer believing it to be alive (*State v. Guffey*, 262 S. W. 2d 152 (Mo. App.)); and that it is not an attempt to bribe a juror when the person believed to be a juror was not one in fact (*State v. Taylor*, 345 Mo. 325, 133 S. W. 2d 366).

Consequently, as the Ninth Circuit has held (*Ethridge v. United States*, 258 F. 2d 234), it is not an offense under 18 U. S. C. § 1503, the statute here in question, to solicit money from a convicted person to make arrangements that he shall be put on probation, where the one soliciting has not the slightest intention of ever approaching anyone once he has his hands on the money. The Ninth Circuit said (258 F. 2d at 236):

“Our conclusion is that the only ‘endeavor’ in this case was the unilateral and futile effort of appellant to extract some ‘easy money’ from Walters. All that the evidence shows is that appellant ‘suggested’ to Walters that if the latter paid appellant the amount of money he solicited he (appellant) would undertake to do the things mentioned in the indictment. Aside from this there is a total absence in the government’s proof or in the averments in the indictment that appel-

lant ever did, or ever intended (even if the solicited money was paid to him) to write to, personally contact, or try to contact, *any person* (official or otherwise) who at any time had any connection whatever with the prosecution of Walters."

Here, likewise, since Vick never had the slightest intention—by his own testimony (R. 132a, 135a, 138a-140a, 260a)—of ever talking to or getting in touch with Elliott, no violation of § 1503 took place.

*Third. United States v. Russell*, 255 U. S. 138, is not to the contrary. There the defendant in error, whose demurrer to the indictment had been sustained below, argued that since the approach charged had been to a juror's wife, who might or might not have been susceptible to contacting her husband who was on the jury, there had been no attempt, but only solicitation. His argument ran as follows (255 U. S. at 139-140):

"To constitute an 'attempt' or 'endeavor' to influence a juror, it is necessary to show, not only that that was the defendant's purpose, but that he performed some acts beyond mere preparation which would 'amount to the commencement of the consummation.' We have only an unaccepted solicitation of a third person to ascertain a juror's attitude towards men held for trial; if we are to assume that the defendant here had in mind, upon receiving information that the juror was not hostile to the men about to be placed on trial, to 'corruptly endeavor to influence' such juror, his conduct amounted to nothing but preparation for the 'endeavor.' Between the two—preparation for the endeavor and the endeavor itself to influence a juror—there is a wide difference."

The Government argued in reply (Br. for Pl. in E. 18) that "the statute uses the word 'endeavor,' and while one of the synonyms of this word is 'attempt,' it nevertheless has a shade of meaning more favorable to the earlier stage in the causal series than 'attempt.' "

It was in the context of those conflicting contentions that the Court said (255 U. S. at 143) that "The word of the section is 'endeavor,' and by using it the section got rid of the technicalities which might be urged as besetting the word 'attempt,' and it describes any effort or essay to accomplish the evil purpose that the section was enacted to prevent."

Nothing in the *Russell* case involved the asserted defense of impossibility, and accordingly the language of the *Russell* opinion, on familiar principles, has no application to that defense. Consequently, the reliance on that decision on the part of the court below, in answer to the present contention (R. 58), was misplaced—and unavailing.

It is true that talking desire to reach a juror to a blank wall may well be, literally, an "endeavor" within the statutory language, even though as a matter of settled criminal law it could not constitute an attempt because of the factor of impossibility. Talking similar desire to a person who has predetermined not to go near the particular juror, it is submitted, comes no closer to accomplishing what the statute forbids.

*Fourth.* The prosecution's contentions under the present heading do not meet the issue, since none of the decisions on which it relies (Br. Op. 11-12) deals with impossibility.

The *Russell* case plainly does not, for reasons already outlined. Nor do *Caldwell v. United States*, 218 F. 2d 370 (D. C. Cir.), certiorari denied, 349 U. S.

930, or *Knight v. United States*, 310 F. 2d 305 (C. A. 5), which simply hold that the endeavor need not succeed in order to constitute a violation of § 1503.

Of course not; if the endeavor had succeeded, if money had actually been offered or paid a juror, then the offense would not have been merely an endeavor under § 1503 but the completed offense under 18 U. S. C. § 206. Petitioner's point is, not that the endeavor did not succeed, but that it could not possibly have succeeded. And none of the authorities cited by the prosecution consider that question.

Nor were the prosecution's contentions below much more relevant. There it argued (Appellee's Br. 24, note 8) that "the modern tendency would be to hold responsible a person who purposely engages in conduct which would constitute a crime if the attendant circumstances were as he believes them to be," citing *inter alia* the American Law Institute's *Model Penal Code*, § 5.01(1)(a), and Wechsler et al., *The Treatment of Inchoate Crimes in the Model Penal Code of the American Law Institute: Attempt, Solicitation, and Conspiracy*, 61 Col. L. Rev. 571.

Here again, the footnote signals flawed and evasive reasoning. The "modern tendency" that the prosecution invoked was not the trend of judicial decision, it was a legislative proposal designed to change the law that has yet to be adopted.

Thus, § 501(1)(a) of the Model Penal Code, see 61 Col. L. Rev. at 573, proposes to provide that a person is guilty of an attempt if he "purposely engages in conduct which would constitute the crime if the attendant circumstances were as he believes them to be." And its sponsors frankly say—far more candidly than said by the prosecution's footnote in the court below—

that "The purpose of paragraph 1(a) is to eliminate legal impossibility as a defense to an attempt charge" (61 Col. L. Rev. at 578).

We will not debate whether impossibility as a defense to a charge of criminal attempt should be legislatively eliminated. The Oklahoma court in *Booth v. State*, 398 P. 2d 863, 872, thought that it should be—but gave that defense full effect as the law stood.

It is sufficient here to say that, under principles of criminal law that are generally accepted, impossibility is still a defense to a charge of criminal attempt; that nothing in *United States v. Russell*, 255 U. S. 138, deals with impossibility as a defense to a charge of endeavor under 18 U. S. C. § 1503; and that *Ethridge v. United States*, 258 F. 2d 234 (C. A. 9), recognizes impossibility as a defense under that provision.

Accordingly, it follows that petitioner did not violate the statute when he spoke to an informer who had predetermined to take no action in consequence of those words except to "make a case."

It necessarily follows, therefore, that the indictment must be dismissed.



**CONCLUSION.**

For the foregoing reasons, the judgment below should be reversed, with directions to dismiss the indictment, or, at the very least, to grant petitioner a new trial.

Respectfully submitted,

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July 1966.

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IN THE  
**Supreme Court of the United States**

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**October Term, 1966**

**No. 29**

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**Z. T. OSBORN, JR.,**

*Petitioner,*

**vs.**

**UNITED STATES OF AMERICA,**

*Respondent.*

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**BRIEF AND MOTION OF AMERICAN CIVIL  
LIBERTIES UNION, AMICUS CURIAE**

---

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**vs.**

**UNITED STATES OF AMERICA,**

*Respondent.*

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**BRIEF AND MOTION OF AMERICAN CIVIL  
LIBERTIES UNION, AMICUS CURIAE**

**Motion to Intervene and Interest of Amicus**

The American Civil Liberties Union has been engaged in the defense of the Bill of Rights for over forty-five years. Much of its energy has been directed toward safeguarding the conditions necessary to the existence of a free society.

Privacy is essential to liberty. Invasions of privacy by the use of spies and the encouragement of crime pose a serious threat to the free society. Until now, virtually no judicial control has been imposed on such use, apart from defining what is impermissible entrapment. This case presents an opportunity for the Court to bring the initial decision to use these techniques under constitutional supervision. Insofar as such decisions as *Olmstead v. United States*, 277 U. S. 455 (1928) and *On Lee v. United States*,

343 U. S. 747 (1952) are authorities against such control, these decisions should be reconsidered and disapproved.

*Amicus* therefore requests leave to file the enclosed brief.

### Statement of Facts

Petitioner, Z. T. Osborn, Jr., an attorney, appeals from the affirmance of a conviction for the crime of jury tampering (18 U. S. C. § 1503) under an indictment charging that in November, 1963 he "did request, counsel and direct" one Robert D. Vick to contact and offer to pay \$10,000 to a member of a petit jury panel to induce the latter to vote for an acquittal in a pending case if he were selected to serve on that jury. The affirmance appears in 350 F. 2d 497 (6th Cir. 1965).

Petitioner Osborn was an attorney for James R. Hoffa in two trials in 1962 and 1963. In connection with a trial that commenced in 1962, Osborn had retained Vick, a Nashville police officer, to make background investigations of prospective jurors. Because of this connection with Hoffa, Vick feared he would lose his job and sought employment with the United States Government as an informer. He reported to Government agents in February and June, 1963, advising them that he had once worked and wished to work again for Osborn. In October 1963, Vick went to Osborn and, claiming to fear loss of his job and a need for money, sought employment. Osborn, knowing nothing of Vick's employment by the Government, again hired Vick to do background investigations of prospective jurors for the second Hoffa trial.

In connection with such investigations, Vick advised Osborn that one of the possible jurors in this second trial was Vick's second cousin, Robert Elliott. According to



Vick, Osborn asked him to see Elliott. Vick duly reported this to a Federal Agent Sheridan and the next day told Osborn—falsely—that Vick had seen Elliott and that the latter was susceptible to hanging the Hoffa jury. At trial, Vick justified this falsehood by saying he “was trying to find out what Mr. Osborn’s intentions were” (Original Record, 265a), to “find out what he was going to do” (263a).

After learning of this, the Federal Bureau of Investigation informed two United States District Judges that Vick had advised them that Osborn was seeking to make contact with prospective members of the Hoffa jury. Though skeptical of the information, the judges authorized Vick to seek further information, carrying on his person a recording device. Vick recorded a subsequent conversation with Osborn, and the tape therefrom was used at Osborn’s trial to corroborate Vick’s testimony against him.

The conviction was affirmed by the Court of Appeals for the Sixth Circuit, which rejected, *inter alia*, contentions that Osborn had been unlawfully entrapped, and that his constitutional rights were violated by the use of the recording device and resulting tape.

### Summary of Argument

1. Privacy is seriously invaded when the Government plants an undercover agent who deceptively either seeks evidence of crime or encourages the commission of a criminal act. Though perhaps necessary for crime detection, such invasions of privacy can destroy the delicate sense of trust which is essential to a free society, unless they are brought under constitutional and judicial control.

2. The Fourth Amendment to the Constitution provides at least one appropriate basis for such control, for it sets out the governing criteria for criminal investigations

which encroach on privacy. To satisfy such criteria, and because the use of spies and crime encouragement is particularly threatening, such techniques should not be employed without (1) a preliminary judicial finding of probable cause of crime, and (2) insofar as encouragement is concerned, a preliminary judicial finding of necessity.

3. Application of some Fourth Amendment requirements to the use of encouragement is already required by some decisions. Insofar as *Olmstead v. United States*, 277 U. S. 455 (1928) and *On Lee v. United States*, 343 U. S. 747 (1952), may be construed as authorities against the full application of the Fourth Amendment, they should be disapproved.

4. Requiring compliance with the Fourth Amendment is not likely to impede proper police work, for it will not prohibit the use of spies and encouragement, but will only regulate such use so that the policies of the Amendment may be as effectively enforced when the search is by deception as when it is by force.

5. The thesis propounded herein is not meant to deny the applicability of other constitutional provisions and doctrines such as the Fifth and Sixth Amendments and the due process clause.

6. Applying the Fourth Amendment to Petitioner's conviction, it is clear that the use of an undercover agent who encouraged the commission of a crime was not preceded by the requisite judicial findings of probable cause and necessity. The conviction should therefore be reversed and a new trial ordered without the agent's evidence.

## ARGUMENT

### I

The uncontrolled use in law enforcement of spies and encouragement\* produces encroachments on privacy so grave as to threaten a free society.

Freedom cannot survive without privacy; totalitarianism cannot tolerate it. Freedom, to be meaningful, means freedom to grow, to experiment, to err and to differ. It presupposes the ability to withdraw oneself from the community, to enter into intimate and circumscribed relationships, to be anonymous, to make only partial disclosure. Westin, *Science, Privacy and Freedom: Issues and Proposals for the 1970's (Part I)*, 66 Colum. L. Rev. 1003, 1022-24 (1966). Privacy is thus a necessary condition of human dignity—the man whose acts, words or thoughts can be observed or brought forth at the will of another “is less of a man, has less human dignity, on that account. He who may intrude upon another at will is the master of the other and, in fact, intrusion is a primary weapon of the tyrant.” Bloustein, *Privacy As An Aspect of Human Dignity: An Answer to Dean Prosser*, 39 N. Y. U. L. Rev. 962, 973-74 (1964).

This Court has long recognized and protected the claims of privacy, especially as these claims fall under the Fourth Amendment and the Self-Incrimination clause of the Fifth.

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\*“The police spy [is one who] enters into conspiratorial plans for the purpose of obtaining information \* \* \* His role is primarily that of an observer and reporter. The stool pigeon acts as a decoy to draw others into a trap. He solicits the commission of a crime. His part is that of a catalyst.” Donnelly, *Judicial Control of Informants, Spies, Stool Pigeons, and Agent Provocateurs*, 60 Yale L. J. 1091, 1092 (1951). Often the same person will play both roles. In this brief, the term “encouragement of crime” will be used instead of Professor Donnelly’s “stool pigeon.” See Rotenberg, *The Police Detection Practice of Encouragement*, 49 Va. L. Rev. 871 (1963).

See, e.g. *Boyd v. United States*, 116 U. S. 616 (1886); *Frank v. Maryland*, 359 U. S. 360 (1959); *Wolf v. Colorado*, 338 U. S. 25 (1949); *Mapp v. Ohio*, 367 U. S. 643 (1961). It has recently held also that "various [other] guarantees create zones of privacy." *Griswold v. Connecticut*, 381 U. S. 479, 484 (1965). There seems to have been little judicial consideration, however, of how privacy can be impaired by the use of spies and the encouragement of crime, and how such impairment can be controlled. Even though these techniques have the same purpose as many other investigative devices—i.e., to obtain evidence of crime from a suspect without his knowing consent—no comparable method of control exists, even though the danger to privacy is at least as great. Indeed, the use of spies and encouragement represents an especially pernicious intrusion into privacy for by using such tactics, (1) society tries to ferret out not merely tangible externals, but the suspect's words and inner thoughts\*; (2) it operates by deception and without notice and (3) it makes the suspect the instrument of his own destruction. The widespread use of these techniques is one of the most effective and economical methods of repression for it can quickly and efficiently rend the fabric of trust, always delicate and especially so in troubled times. For example, it has been reported that in South Africa, "the use of informers corrodes all human relations in the black townships. Mutual confidence between two friends becomes a dangerous luxury." Lilyveld, *Where 78% of the People*

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\* "Why, look you now, how unworthy a thing you make of me! You would play upon me; you would seem to know my stops; you would pluck out the heart of my mystery; you would sound me from my lowest note to the top of my compass \* \* \*." Hamlet to Rosencrantz and Guildenstern, *Hamlet*, Act III, Scene II, lines 339-43. Among its many qualities, the play brilliantly depicts the catastrophe befalling at least one society in which "the use of informers, accessories, accomplices, false friends or any of the other betrayals which are 'dirty business'," *On Lee v. United States*, 343 U. S. 747, 757 (1952) was rampant.

*Are The "Others,"* N. Y. Times Magazine, June 19, 1966, 10, 20.\* Indeed, in a free society, the very threat that such informers might exist is enough to arouse fear and outrage. See *Town Is Aroused By Secret Police*, N. Y. Times, August 13, 1966, p. 27, col. 1.

Even if "artifice and stratagem may be employed to catch those engaged in criminal enterprise," *Sorrells v. United States*, 287 U. S. 435, 441 (1932), techniques posing so great a danger to the free society cannot be left uncontrolled.

## II.

**The employment of spies and the encouragement of crime should comply with the requirements of the Fourth Amendment.**

### A. The appropriateness of the Fourth Amendment.

Although perhaps not the only pertinent constitutional provision,\* the Fourth Amendment would seem to be necessarily applicable to the use of spies and encouragement. Such techniques constitute official invasions of privacy in order to obtain evidence or information from a suspect without his knowing consent, generally for use against him in a criminal or forfeiture proceeding. This is precisely the nature and purpose of the conventional search and seizure which brings the Fourth Amendment into operation. As Mr. Justice Frankfurter noted, after reviewing the history of the Fourth Amendment:

"two protections emerge from the broad constitutional proscription of official invasion, the first of these is the

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\* When one African was asked why he did not ask his best friend to help him waylay some of the known informers (called "impimpi"), he replied "How do I know *he's* not an *impimpi*?" *Id.* at 22 (emphasis added).

\* See Part IV below.



right to be secure from intrusion into personal privacy, the right to shut the door on officials of the state unless their entry is under proper authority of law. The second and intimately-related protection, is self-protection: the right to resist unauthorized entry which has as its design the securing of information to fortify the coercive power of the state against the individual, information which may be used to effect a further deprivation of life, liberty or property." *Frank v. Maryland*, 359 U. S. 360, 365 (1959).\*

The very limitations presently imposed on the use of encouragement and entrappers, those who solicit and participate in the commission of crime on behalf of the Government, reflect the purely investigatory nature of this device—it may be used only “to catch those engaged in criminal enterprise,” *Sorrells v. United States*, 287 U. S. at 441-42 (1932), “to detect those engaged in criminal conduct,” *Sherman v. United States*, 356 U. S. 369, 383 (1958) (Frankfurter, J., concurring). It may not be used to create crime where it would not otherwise have existed. Indeed, the only justification for permitting the state to participate in creating a crime and then punishing the offender is that in certain offenses, particularly the victimless crimes, enforcement against “known” and “chronic” offenders, is otherwise impossible. See Donnelly, 60 Yale L. J. at 1113-14; Rotenberg, *The Police Detection Practice of Encouragement*, 49 Va. L. Rev. 871, 874-76 (1963; Note, *Administration of the Affirmative Trap and the Doctrine of Entrapment: Device and Defense*, 31 U. Chi. L. Rev. 137, 150-54, 172-74 (1963). Thus, as is shown by the discussion below of the probable cause requirement, some courts have required that

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\* Although Justice Frankfurter was referring specifically to entry into a home, it is well established that Fourth Amendment relates to many other types of invasions of privacy. See, e.g., *Bielicki v. Superior Court of Los Angeles*, 57 Cal. 2d 600, 371 P. 2d 288 (1962) (eavesdropping on public toilet); *Henry v. United States*, 361 U. S. 98 (1959) (automobile); *Blok v. United States*, 188 F. 2d 1019 (D. C. Cir. 1951) (search of employee's desk a violation despite supervisor's consent).

as a prerequisite to the use of the trap there be the same kind of pre-existing condition as in the typical search and seizure situations—that a crime has been or is being committed. *Cf. Becker v. United States*, 62 F. 2d 1007, 1008 (2d Cir. 1933) (“it has been uniformly held that when the accused is continuously engaged in the proscribed conduct, it is permissible to provoke him to a particular violation which will be no more than one instance in a uniform series”); Donnelly, 60 Yale L. J. at 1108 “a factual analysis of the entrapment cases discloses that the allocation of ‘intent’ to the defendant [which makes the defense unavailable] \* \* \* actually depends upon whether the defendant was previously engaged in criminal activities of a similar character.”)

**B. The Fourth Amendment requires that before spies and encouragement be utilized, a judicial officer find that—**

- (1) Probable cause exists to believe that evidence of crime will be obtained; and
- (2) At least insofar as encouragement is concerned, no other means is available to obtain such information.

#### 1. *The Probable Cause Requirement.*

The requirements for compliance with the Fourth Amendment “are not technical or unreasonably stringent; they are the bedrock without which there would be no effective protection of the right to personal liberty.” *Lopez v. United States*, 373 U. S. 427, 464 (1963) (Brennan, J., dissenting). They include limitations of the search to a specific place, and person, a ban on seizure of non-evidentiary matter, *id.* at 463-64, and the constitutionally explicit requirement of probable cause. The first two seem to have been met in this case: Vick focused on a specific suspect, in connection with a specific transaction and he seized words

which were the verbal acts necessary to commit the crime, and thus more than merely evidentiary.\* No further discussion of the problems raised by these requirements is therefore necessary at this time.

The probable cause requirement, which was not met in this case, see pp. 13-14 below, is perhaps the most crucial of all especially in the encouragement situations. Encouraging crime, like the use of spies, is abhorrent partly because it depends on deception and betrayal. But other and separate instincts are also offended when the state resorts to encouragement. Much of the revulsion against such "dirty business" is derived from a feeling that a decent society does not tempt and solicit its people into crime, does not seek out, play upon and then punish the weak-willed and the susceptible. See the facts in *e.g.*, *Sherman v. United States*, 356 U. S. 369 (1957); *Trent v. United States*, 284 F. 2d 286 (D. C. Cir. 1960); *U. S. ex rel. Toler v. Pate*, 332 F. 2d 425 (7th Cir. 1964). For who can cast the first stone? Which of us is more than "indifferent honest?" Indeed, few things cause greater resentment and, ultimately, contempt for the law than the use of an entrapper who may himself be a "drug addict, pickpocket, pimp or petty criminal." Donnelly, 60 Yale L. J. at 1094. Cf. Burroughs, *Feeding the Monkey* in Wakefield (ed.) *THE ADDICT* 80, 95-96 (1963). Nor is there much social value in punishing someone who, though easily tempted, would not have committed a crime without encouragement.

For these reasons, law enforcement authorities should not be permitted to spy, to tempt, to seek betrayals, except upon a clear showing that reasonable ground exists to

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\* Indeed, in crimes for which such tactics are used, the words sought and seized usually are the crucial criminal acts, for these crimes are generally either transactional, *i.e.*, vice, narcotics, liquor, gambling, or conspiratorial.

believe that a crime has been, is being or imminently will be committed.

Such a requirement would not be startlingly novel or overly exacting. A few courts have already imposed some kind of reasonable ground requirement for encouragement, even without applying the Fourth Amendment. See, *e.g.*, *Ryles v. United States*, 183 F. 2d 944 (10th Cir. 1950); *Heath v. United States*, 169 F. 2d 1007, 1010 (10th Cir. 1948); *Trice v. United States*, 211 F. 2d 513 (9th Cir. 1954); and see the suggestion of the British Royal Commission on Police Powers and Procedures (1929) quoted in Donnelly, 60 Yale L. J. at 1114, n. 65; Note, 31 U. Chi. L. Rev. at 173-74. Indeed, it has been said that because of the time, trouble and danger involved police rarely embark on encouragement unless they do have reasonable grounds for belief that the defendant is engaged in crime, though this seems to be a rather optimistic finding. Compare *Rotenberg*, 49 Va. L. Rev. at 875, with *e.g.*, *United States ex rel. Toler v. Pate*, 332 F. 2d 425 (7th Cir. 1964); *United States v. Campbell*, 235 F. supp. 190 (E. D. N. Y. 1964). Moreover, the importance attributed by the prevailing entrapment doctrines to the defendant's predisposition reflects a belief that only the "chronic" and not the "situational" offender should be punished, Donnelly, 60 Yale L. J. at 113-14; thus, factual analyses of cases upon to 1951 showed that entrapment was a good defense to those who had not previously engaged in similar criminal conduct. *Id.* at 1108.

Nevertheless, many courts, both federal and state, have refused to require reasonable ground as a prerequisite to entrapment. *Silva v. United States*, 212 F. 2d 422 (9th Cir. 1954); *Washington v. United States*, 275 F. 2d 687, 690 (5th Cir. 1960); *Childs v. United States*, 267 F. 2d 619 (D. C. Cir. 1958); *People v. Wells*, 25 Ill. 2d 146, 182 N. E. 2d

689 (1962); Donnelly, *id.* at 1106. In some cases, reasonable suspicion has been held sufficient, *Childs v. United States*, *supra*, or a poor reputation, *Washington v. United States*, 275 F. 2d at 290. In other cases, the officer was not required to show any preliminary suspicion of criminality. *Silva v. United States*, *supra*; *People v. Wells*, *supra*.

## 2. The "Necessity" Requirement for Encouragement.

The existence of reasonable grounds for belief respecting the existence of crime and the availability of seizable matter is not enough, however, for that would ignore the especially odious aspects of the use of encouragement. These include first of all the bad example set simply by the State's reliance on temptations, false friends and crime creation, even if everyone performs his job as he should. But not everyone does perform his job so highmindedly. The potential for such abuses as frame-ups and false information is especially high in these cases, particularly where the informer's monetary or other return depends on a successful trap, as it often does. See *Williamson v. United States*, 311 F. 2d 411 (5th Cir. 1962). This is partly also because many of the informers are often criminals themselves, and would hardly boggle at false charges or frame-ups. See Donnelly, 60 Yale L. J. at 1094 n. 12 (of 150 cases in which one informer participated, 40 were admittedly framed). As a result, not only are innocent people jeopardized, but law enforcement is further discredited.

Because such abuses are quite unlikely in the purely search situation, a probable cause requirement may be enough in that context. But the unsavory nature and high abuse potential of encouragement calls for an additional preliminary showing that such tactics are necessary because no other means are readily available for obtaining



the necessary information or for apprehending and convicting the alleged offender.\* Just as the "reasonableness" clause of the Fourth Amendment may have justified broadening the powers of the police in some contexts, *cf. Carroll v. United States*, 267 U. S. 132 (1925) so it may also justify contracting police powers where the device is inherently offensive and easily abused. Compare S. 2813, § 8(c)(3), 87th Cong., 2d Sess. (1962) (court authorized wiretapping permitted by Attorney General's bill only on a showing that "no other means are readily available for obtaining that information.")

### 3. *The Requirement Of A Preliminary Judicial Finding.*

Techniques so dangerous and inherently unsavory as spies and encouragement cannot be left to the initial discretion of the police officer. Some of the reasons were classically stated by Mr. Justice Jackson in *Johnson v. United States*, 333 U. S. 10, 13-14 (1948). Moreover, police officers who are used to such practices may be hardened and insensitive to the dangers. Finally, there will almost never be time pressures of the kind which would make prior recourse to a magistrate excessively burdensome. Thus, as with conventional searches, the use of spies and encouragement should take place only upon authorization by a neutral, disinterested magistrate.

### C. **Since there was no probable cause determination prior to Vick's approach to Osborn, the conviction based on evidence obtained by Vick's activities must be set aside.**

The facts herein present a typical case of encouragement. Vick became a special employee for the F. B. I.

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\* *Cf. Rotenberg*, 49 Va. L. Rev. at 876. (In many cases, encouragement is used despite the pre-existence of probable cause because the available evidence may be inadmissible and therefore inadequate to convict.)

sometime in early 1963. Apparently suspecting Osborn of jury tampering, Vick later deceived him into thinking Vick would participate in such tampering and encouraged Osborn into words and activities which, if the report thereof be believed, showed an attempt by Osborn to corrupt justice. All of this, Vick put it, "to find out what Mr. Osborn's intentions were \* \* \*" (265a).

The record does not show, however, that Vick's suspicions were based on any solid fact, and there certainly was no preliminary finding by a magistrate of either probable cause or necessity.\* Insofar as Vick's and the F. B. I.'s purpose was truly the detection of prior, current or imminent crime, the Fourth Amendment required a finding of probable cause before the attempt was made to search and extract damaging evidence from Osborn by fraud and deception.

A baseless search cannot be validated by what is seized. By the same token, a baseless trap may not be validated by its success. Since there was no preliminary finding—or even showing—of probable cause to justify the tactics used here, Vick's evidence should not have been received and the conviction should be set aside.

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\* This is apart from the question of whether there was a proper finding of probable cause before the November 11 recording was made, touched upon in a footnote in the opinion below. 350 F. 2d 497, 503, n. 1.

## III.

**Some objections to the theory presented herein:**

- (A) *Olmstead v. United States*, 277 U. S. 438 (1928) and *On Lee v. United States*, 343 U. S. 747 (1952) should be disapproved;
- (B) *Lopez v. United States*, 373 U. S. 427 (1963) is distinguishable;
- (C) Law enforcement will not be seriously hindered.

A. Insofar as *Olmstead* and *On Lee* are authorities against judicial control of spies and encouragement, they should be disapproved.

*Olmstead* and *On Lee* can both be read as authorities against the thesis propounded herein. *Olmstead's* holding that the Fourth Amendment protects only against a trespassory seizure of tangible materials was clearly intended by Mr. Chief Justice Taft to permit the use of ruse and entrapment. 277 U. S. at 468.\* But surely this decision, much criticized when first handed down, see Murphy, WIRE-TAPPING ON TRIAL: A CASE STUDY IN THE JUDICIAL PROCESS 125-26 (1965), has not been treated kindly by time, despite Mr. Justice Van DeVanter's hopeful assurances to his Chief Justice. Murphy, *op. cit. supra* at 126. The tangibility requirement has clearly been abandoned, see, *e.g.*, *Silverman v. United States*, 365 U. S. 505 (1961); *Lanza v. New York*, 370 U. S. 139, 142 (1962) and the trespass requirement has been subjected to the fate of most obsolete doctrines—sophistical and inconsistent distinctions. Compare *Goldman v. United States*, 316 U. S. 129 (1942) with

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\* The Government's brief argued that if wiretapping were brought under constitutional control, "on the same principle would not all manner of evidence gathered by ruse or entrapment have to be excluded?" Quoted in Donnelly, 60 Yale L. J. at 1111-1112 n. 63.

*Silverman v. United States*, 365 U. S. 505 (1961) and *Clinton v. Virginia*, 377 U. S. 158 (1964) *rev'g*, 204 Va. 275, 130 S. E. 2d 437 (1963), (constitutional protection denied where eavesdropping device placed on but not into a wall, but available where it penetrated less than an inch); compare *Gouled v. United States*, 255 U. S. 298 (1921) with *On Lee v. United States*, 343 U. S. 747 (1952) (entry by false friend held a trespass in *Gouled*, but not in *On Lee* because tangibles not seized in *On Lee*, 343 U. S. at 753).

Although rendered virtually meaningless by subsequent decisions, the trespass requirement still stands as a bar to realistic assessment by this Court of the real interests involved—the appropriate means to reconcile the true claims of privacy with the real needs of law enforcement. It leaves law enforcement authorities completely free to invade privacy by any non-trespassory means at their disposal, no matter how great or insidious such means may be.\* Moreover, as science and human ingenuity progress, a physical trespass—now often unnecessary and unwanted—will become even less necessary. We therefore ask this Court to disapprove explicitly so much of *Olmstead* as still requires a “trespass,” so that the Court may turn to the genuine and perplexing problems involved in reconciling privacy with law enforcement.

Even if the Court is unwilling to discard the trespass principle completely, it should at least reject *On Lee*'s limitation on *Gouled* and, in keeping with the current protection afforded intangible conversations, find the necessary trespass where a government informer obtains access to suspect's home or office by misrepresenting his mission or himself. Presently pending before this Court is *Lewis v.*

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\* For a current list of such devices including lasers, parabolic microphones and ultrasonic sound reflectors, see Westin, 66 Colum. L. Rev. at 1005-10.

*United States*, 352 F. 2d 799 (1st Cir. 1965), *cert. granted*, 86 Sup. Ct. 646 (Jan. 1966) which raises the issue of whether an entry obtained by misrepresentation is covered by the Fourth Amendment. It is therefore unnecessary here to present full argument on this issue, except to urge this Court to recognize the equation of force and deception which it found in *Massiah v. United States*, 377 U. S. 201, 206 (1964)\* and to hold that a deceptive entry to obtain verbal or other knowledge is as much an invasion of privacy as a forcible entry to obtain tangibles. See *Fraternal Order of Eagles v. United States*, 57 F. 2d 93 (3d Cir. 1932); *Gatewood v. United States*, 209 F. 2d 789 (D. C. Cir. 1953); *United States v. Recklis*, 119 F. Supp. 687 (D. Mass. 1954); *United States v. Mitchneck*, 2 F. Supp. 225 (D. Pa. 1933); cf. Note, *Effective Consent to Search and Seizures*, 113 U. Pa. L. Rev. 260, 271-72 (1963); but see *United States v. Bush*, 283 F. 2d 51 (6th Cir. 1960); *Warren v. Territory of Hawaii*, 119 F. 2d 936 (9th Cir. 1941).

**B. *Lopez v. United States* is distinguishable.**

On the surface, *Lopez* presents an analogous situation: a federal agent "plays along" with an attempted bribe to obtain evidence to convict the attempted offeror. But *Lopez* contains two significant differences:

1. The agent was not hiding his identity or the result of a deceptive plant. Defendant initiated the transaction, in full knowledge of the agent's identity.
2. There was not even a suggestion, nor could there be, that the agent had induced the defendant to offer any bribes. Indeed, the agent indicated his reluctance to accept the bribe even during the crucial recorded conversation, but the defendant continued to press him. 373 U. S. at 431.

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\* In *Massiah*, this Court agreed with Judge Hays that *Massiah* "was more seriously imposed upon \* \* \* because he did not even know he was under interrogation by a government agent." 377 U. S. at 206.



The *Lopez* situation, which raises neither the spy nor the encouragement situation, is to be contrasted with the deliberate plant, flagrant deception and the clear encouragement, which took place here. Obviously, the agent's conduct in *Lopez* raises none of the dangers described above, even though some deception was practiced in the agent's instructions to "play along." See 373 U. S. at 430.

**C. Placing spies and entrappers under Fourth Amendment controls is not likely to harm the real needs of law enforcement.**

The requirements proposed herein will not seriously hinder law enforcement for it is not proposed that the use of spies and entrappers be prohibited, but only that they be brought under the control of a neutral judicial officer. Infiltration, decoys, solicitation, and the other necessary artifices and stratagems will still be permissible but only upon a showing that they are warranted by preexisting facts, and, insofar as encouragement is concerned, is the only means available. Where suspicion has focused on a particular individual, there is probable cause that a crime has been, is or immediately will be committed, and that non-evidentiary matter is available, a warrant would certainly be in order.

Where there is no probable cause, infiltration merely to test and to probe may well be proscribed.

Moreover, where espionage and sabotage are concerned, special provisions ensuring secrecy may also be appropriate, and the gravity of the danger might even justify a warrant on a somewhat lower probability of danger.

## IV.

**Other constitutional bases for judicial control: the Fifth and Sixth Amendments and the due process clause.**

The focus of this brief on the Fourth Amendment is not intended to imply that other constitutional provisions may not be appropriate to controlling spies and encouragement. Depending on the facts, these could include the Sixth Amendment, the Fifth Amendment, and the due process clause of the Fifth and Fourteenth Amendments.

**A. The Sixth Amendment.**

The facts of this case present a particularly dangerous example of the use of spies and encouragement. Vick's undercover activities were aimed at Osborn's activities on behalf of Osborn's client, James R. Hoffa. Regardless of whether Vick obtained information relevant to the Hoffa defense, compare *Coplon v. United States*, 191 F. 2d 749 (D. C. Cir. 1951); *Caldwell v. United States*, 205 F. 2d 879 (D. C. Cir. 1953), a lawyer's apprehension that he may be spied upon or solicited, could do much to dampen the vigor of his defense. Background investigations of prospective jurors are necessary to adequate trial preparation. If a lawyer knows he faces spies and informers in this task, he may well be afraid to undertake it, thereby prejudicing his client. Compare *Holt v. Virginia*, 381 U. S. 131 (1965) (contempt citation for lawyer's conduct that was found to be improper by state court held to violate due process clause). It would thus be appropriate for this Court to hold that such tactics cannot ever be used against a lawyer.

### B. The Fifth Amendment.

The privilege against self-incrimination is also an appropriate source of control over these devices—the use of spies and entrappers constitutes an attempt to obtain evidence against a defendant from his own mouth, without his knowledge or consent. Such tactics are thus squarely in conflict with the accusatorial nature of our system. *Malloy v. Hogan*, 378 U. S. 1, 7-8 (1964). Indeed, *Miranda v. Arizona*, 86 Sup. Ct. 1602 (1966), deals expressly with the kind of deceit which characterizes this aspect of the use of spies and entrappers by condemning all attempts to induce a defendant to waive his privilege against self-incrimination by trickery or cajolery. 86 Sup. Ct. at 1629. In this respect, it merely carried out the implications of such decisions as *Massiah v. United States*, 377 U. S. 201 (1964) and *Spano v. New York*, 360 U. S. 315 (1960), where deceit and betrayal were used to obtain verbal evidence from the defendant to be used against him. Though these cases turned on counsel and voluntariness considerations, the necessary implication of the self-incrimination clause is of course obvious.

Finally, the use of spies and entrappers may also raise other grave issues having to do with the purity of the courts, see *Sorrells v. U. S.*, 287 U. S. at 455, 459 (Roberts, J., concurring), fundamental fairness, and the “act” requirement. See *Robinson v. California*, 370 U. S. 660 (1962); Note, “*The Serpent Beguiled Me and I Did Eat*”—*The Constitutional Status of the Entrapment Defense*, 74 Yale L. J. 942, 946 (1965).

### Conclusion

Because the Fourth Amendment is properly applicable to official use of spies and encouragement, and because the use of Mr. Vick to spy upon and trap Petitioner was not preceded by a judicial finding or probable cause and necessity in accordance with Fourth Amendment requirements, Petitioner's conviction must be set aside, and a new trial ordered without the evidence obtained by Mr. Vick.

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# **In the Supreme Court of the United States**

**OCTOBER TERM, 1966**

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**No. 29**

**Z. T. OSBORN, JR., PETITIONER**

*v.*

**UNITED STATES OF AMERICA**

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**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE SIXTH CIRCUIT**

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**BRIEF FOR THE UNITED STATES**

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**OPINION BELOW**

The opinion of the court of appeals (R. 47-66) is reported at 350 F. 2d 497.

## **JURISDICTION**

The judgment of the court of appeals was entered on August 27, 1965 (R. 66). A petition for rehearing was denied on October 8, 1965 (R. 67). The petition for certiorari was filed on November 5, 1965, and was granted on January 31, 1966 (R. 68; 382 U.S. 1023). The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

(1)

**QUESTIONS PRESENTED**

1. Whether a recording of petitioner's conversation with an informant, which had been made with the authorization of two district judges, was properly admitted in evidence.

2. Whether petitioner was entrapped as a matter of law.

3. Whether the trial court erred in the admission of evidence and in its instructions regarding the defense of entrapment.

4. Whether petitioner's efforts to bribe a juror constituted an offense although his supposed confederate did not intend to pass the bribe.

**STATUTE INVOLVED**

18 U.S.C. 1503 provides in pertinent part:

Whoever corruptly, or by threats or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any witness, in any court of the United States or before any United States commissioner or other committing magistrate, or any grand or petit juror, \* \* \* or corruptly or by threats or force, or by threatening letter or communication, influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice, shall be fined not more than \$5,000 or imprisoned not more than five years, or both.

**STATEMENT**

Petitioner was convicted after a trial by jury in the United States District Court for the Middle District of Tennessee on one count charging a violation of 18 U.S.C. 1503, in that during the period from approxi-

mately November 6 to 15, 1963, he corruptly endeavored to influence, obstruct and impede the due administration of justice in a prospective federal criminal trial by requesting, counseling and directing one Robert D. Vick to communicate with Ralph A. Elliott, a member of the petit jury venire, and to offer him the sum of \$10,000 to vote for acquittal.<sup>1</sup> He was sentenced to imprisonment for a period of three and a half years and to pay a fine of \$5,000. The court of appeals affirmed (R. 47-66).

1. The evidence against petitioner on the count of which he was convicted consisted principally of the testimony of Vick—corroborated by a tape recording of one of petitioner's conversations with Vick—and of petitioner's admissions made to the district judges when he was confronted with the recording:

a. Robert Vick, a member of the Nashville Police Department, had been employed by petitioner to investigate the background of jurors prior to and during a federal criminal trial of James R. Hoffa in Nashville, Tennessee (R. 192a-193a). That trial was held between October 22 and December 23, 1962, and petitioner was one of Hoffa's attorneys. After that trial was over, a grand jury conducted an investigation of alleged obstructions of justice in the course of the Nashville trial and returned an indictment against Hoffa and others on May 9, 1963. Hoffa again retained petitioner as one of his counsel.

<sup>1</sup> The indictment contained two other counts charging similar offenses with respect to an earlier trial of James R. Hoffa, who was one of the defendants in the prospective trial. The government dismissed count 3, and petitioner was acquitted on count 2.



Vick was once more employed by petitioner to investigate jurors in preparation for the trial of the obstruction-of-justice charges (R. 197a). On November 7, 1963, petitioner and Vick were in petitioner's office discussing the jurors. Vick then said that he knew some of the jurors on the panel. Petitioner "jumped up" and said, "You do? Why didn't you tell me?" Fearing that the office might be "bugged," they then went outside and discussed the matter in the alley. Vick told petitioner that a prospective juror, Ralph Elliott of Springfield, was a cousin of his. Petitioner told Vick to go to Springfield and talk with Elliott to see what, if any, arrangements could be made about the case (R. 198a-201a).

Unknown to petitioner, Vick had several months previously communicated with Walter Sheridan of the Department of Justice (see pp. 17-19, *infra*). He reported the above conversation to Sheridan and was requested to put the information in the form of an affidavit (R. 383a, 653a-655a). The affidavit was shown by government attorneys on November 8 to Judges William E. Miller and Frank Gray, Jr., the two District Judges for the Middle District of Tennessee (R. 655a-661a). They authorized government agents to affix a recorder to Vick's person, under proper surveillance, so as to determine from recordings of further conversations between Vick and petitioner whether the charges in the affidavit were true or false (*ibid.*) An F.B.I. agent thereupon attached a tape recorder with adhesive tape to Vick's back, with microphones at each shoulder (R. 202a). Vick then returned to petitioner's office. Again

petitioner and Vick went outside to talk and they discussed the juror, "and the fact that [petitioner] wanted him on his side, and how much it would take \* \* \*" (R. 203a). Petitioner told Vick to let Elliott state the amount he would need and then to double it— i.e., if Elliott mentioned \$5,000, Vick was to offer him \$10,000. Vick then returned to the F.B.I. agents, who discovered that the recording device had not operated properly. Vick made a written statement of what had occurred (R. 201a-205a).

On Veterans' Day, November 11, a recorder was again strapped to Vick's back, and he went to see petitioner at his office. On this occasion, the recorder worked, and the following conversation was recorded on tape (R. 741a-749a):

GIRL. You can go in now.

VICK. O.K., honey.

Hello, Mr. Osborn.

OSBORN. Hello, Bob, close the door, my friend, and let's see what's up.

VICK. How're you doing?

OSBORN. No good. How're you doing?

VICK. Oh, pretty good. You want to talk in here?

OSBORN. How far did you go?

VICK. Well, pretty far.

OSBORN. Maybe we'd better . . .

VICK. Whatever you say. Don't make any difference to me.

OSBORN. (Inaudible whisper.)

VICK. I'm comfortable, but er, this chair sits good, but we'll take off if you want to, but

OSBORN. Did you talk to him?

VICK. Huh?

OSBORN. Did you talk to him?

VICK. Yeah. I went down to Springfield Saturday morning and talked to or

OSBORN. Elliott?

VICK. Elliott.

OSBORN. (Inaudible whisper.)

VICK. Huh?

OSBORN. Is there any chance in the world that he would report you?

VICK. That he will report me to the FBI? Why of course, there's always a chance, but I wouldn't get into it if I thought it was very, very great.

OSBORN. Laughed.

VICK. You understand that.

OSBORN. (Laughing). Yeah, I do know. Old Bob first.

VICK. That's right. Don't worry. I'm gonna take care of old Bob and I know, and of course I'm depending on you to take care of old Bob if anything, if anything goes wrong.

OSBORN. I am. I am. Why certainly.

VICK. Er, we had coffee Saturday morning and now he had previously told you that it's the son.

OSBORN. It is?

VICK. Yes, and not the father.

OSBORN. That's right.

VICK. The son is Ralph Alden Elliott and the father is Ralph Donnal. Alden is er—Marie, that's Ralph's wife who killed herself. That was her maiden name, Alden, see? Anyway, we had coffee and he's been on a hung jury up here this week, see?

OSBORN. I know that.

VICK. Well, I didn't know that but anyway, he brought that up so he got to talking about

the last Hoffa case being hung, you know, and some guy refusing \$10,000 to hang it, see, and he said the guy was crazy, he should've took it, you know, and so we talked about and so just discreetly, you know, and course I'm really playing this thing slow, that's the reason I asked you if you wanted a lawyer down there to handle it or you wanted me to handle it, cause I'm gonna play it easy.

OSBORN. The less people, the better.

VICK. That's right. Well, I'm gonna play it slow and easy myself and er, anyway, we talked about er, something about five thousand now and five thousand later, see, so he did, he brought up five thousand see, and talking about about [sic] how they pay it off you know and things like that. I don't know whether he suspected why I was there or not cause I don't just drop out of the blue to visit him socially, you know. We're friends, close kin, cousins, but I don't ordinarily just, we don't fraternize, you know, and er, so he seemed very receptive for er, to hang the thing for five now and five later. Now, er I thought I would report back to you and see what you say.

OSBORN. That's fine! The thing to do is set it up for a point later so you won't be running back and forth.

VICK. Yeah.

OSBORN. Then tell him it's a deal.

VICK. It's what?

OSBORN. That it's a deal. What we'll have to do—when it gets down to the trial date, when we know the date, tomorrow for example if the Supreme Court rules against us, well, within a week we'll know when the trial comes. Then

he has to be certain that when he gets on, he's got to know that he'll just be talking to you and nobody else.

VICK. Social strictly.

OSBORN. O yeah.

VICK. I've got my story all fixed on that.

OSBORN. Then he will have to know where to, he will have to know where to come.

VICK. Well, er . . .

OSBORN. And, he'll have to know when.

VICK. Er, do you want to use him yourself? You want me to handle it or what?

OSBORN. Uh huh. You're gonna handle it yourself.

VICK. All right. You want to know it when he's ready, when I think he's ready for the five thousand. Is that right?

OSBORN. Well no, when he gets on the panel, once he gets on the jury. Provided he gets on the panel.

VICK. Yeah. Oh yeah. That's right. That's right. Well now, he's on the number one.

OSBORN. I know, but now . . .

VICK. But you don't know that would be the one.

OSBORN. Well, I know this, that if we go to trial before that jury he'll be on it but suppose the government challenges him over being on another hung jury.

VICK. Oh, I see.

OSBORN. Where are we then?

VICK. Oh, I see. I see.

OSBORN. So we have to be certain that he makes it on the jury.

VICK. Well now, here's one thing, Tommy. He's a member of the CWA, see, and the Teamsters, or



OSBORN. Well, they'll knock him off.

VICK. Naw, they won't. They've had a fight with the CWA, see?

OSBORN. I think everything looks perfect.

VICK. I think it's in our favor, see. I think that'll work to our favor.

OSBORN. That's why I'm so anxious that they accept him.

VICK. I think they would, too. I don't think they would have a reason in the world to. I don't think that I'm under any surveillance or suspicion or anything like that.

OSBORN. I don't think so.

VICK. I don't know. I don't frankly think, since last year and since I told them I was through with the thing, I don't think I have been. Now Fred,

OSBORN. I don't think you have either.

VICK. You know Fred and I may not (pause), he may be too suspicious and I may not be suspicious enough. I don't know.

OSBORN. I think you've got it sized up exactly right.

VICK. Well, I think so.

OSBORN. Now, you know you promised that fella that you would have nothing more to do with that case.

VICK. That's right.

OSBORN. At that time you had already checked on some of the jury that went into Miller's court. You went ahead and did that.

VICK. Well, here's another thing, Tommy.

OSBORN. \_\_\_\_\_ church affiliations, background, occupation and that sort of thing on those that went into Miller's court. You didn't even touch them. You didn't even

investigate the people that were in Judge Gray's court.

VICK. Well, here's the thing about it, Tommy. Soon as this damn thing's over, they're gonna kick my ——— out anyway, so probably Fred's too. So, I might as well get out of it what I can. The way I look at it. I might be wrong cause the Tennessean is not gonna have anything to do with anybody that's had anything to do with the case now or in the past, you know that. Cause they're too close to the Kennedy's.

OSBORN. All right, so we'll leave it to you. The only thing to do would be to tell him, in other words your next contact with him would be to tell him if he wants that deal, he's got it.

VICK. O. K.

OSBORN. The only thing it depends upon is him being accepted on the jury. If the government challenges him there will be no deal.

VICK. All right. If he is seated.

OSBORN. If he's seated.

VICK. He can expect five thousand then and OSBORN. Immediately.

VICK. Immediately and then five thousand when it's hung. Is that right?

OSBORN. All the way, now!

VICK. Oh, he's got to stay all the way?

OSBORN. All the way.

VICK. No swing. You don't want him to swing like we discussed once before. You want him

OSBORN. Of course, he could be guided by his own b———, but that always leaves a question. The thing to do is just stick with his crowd. That way we'll look better and maybe

they'll have to go to another trial if we get a pretty good count.

VICK. Oh. Now, I'm going to play it just like you told me previously, to reassure him and keep him from getting panicky, you know. I have reason to believe that he won't be alone, you know.

OSBORN. You assure him of that. 100%.

VICK. And to keep any fears down that he might have, see?

OSBORN. Tell him there will be at least two others with him.

VICK. Now, another thing, I want to ask you does John know anything. You know, I originally told John about me knowing.

OSBORN. He does not know one thing.

VICK. He doesn't know. O.K.

OSBORN. He'll come in and recommend this man ——— and I'll say well just let it alone, you know.

VICK. Yeah. So he doesn't know anything about this at all?

OSBORN. Nothing.

VICK. Now he hasn't seen me. When I first came here he was in here, see.

OSBORN. ——— We'll keep it secret. The way to keep it safe is that nobody knows about it but you and me ——— where could they ever go?

VICK. Well, that's-it, I reckon, or I'll probable go down there. See, I'm off tonight. I'm off Sunday and Monday, see. That's why I talked to you yesterday. I had a notion to go down there yesterday cause I was off last night and I'm off again tonight.

OSBORN. It will be a week at least until we know the trial date.

VICK. O.K. You want to hold up doing anything further till we know.

OSBORN. Unless he should happen to give you a call and ——— something like that, then you just tell him, whenever you happen to run into him.

VICK. Well, he's not apt to call, cause see

OSBORN. You were very circumspect.

VICK. Yeah. We haven't talked really definite and I think he clearly understands. Now, he might, it seemed to me that maybe he thought I was joking or, you know.

OSBORN. That's a good way to leave it, he's the one that brought it up.

VICK. That's right.

OSBORN. ———

VICK. Well, I knew he would before I went down there.

OSBORN. Well, ———

VICK. Huh?

OSBORN. I'll be talking to you.

VICK. I'll wait a day or two.

OSBORN. Yeah. I would.

VICK. Before I contact him. Don't want to seem anxious and er

OSBORN. ———

VICK. O. K. See you later.

\* \* \* \* \*

Vick testified regarding the substance of the conversation (R. 205a-207a). The tape was played for the jury and a copy of the transcript was shown to each member (R. 210a-212a). Petitioner testified that the tape recording of his conversation with Vick was substantially accurate (R. 426a).

b. Also read to the jury at petitioner's trial were the transcripts of three sessions pertaining to petitioner's disbarment held in the Middle District of Tennessee. After receiving and hearing the tape recordings, the two judges of the district requested petitioner to appear before them.<sup>2</sup> He did so on November 15, 1963 (R. 371a). He was advised that the court had received substantial information "indicating a plan to tamper [with the petit jury panel] in connection with the [upcoming] Hoffa case" and that specific acts had been committed in furtherance of that plan (R. 372a). After being reminded of his right to counsel and to keep silent, petitioner was asked whether he had any information concerning this plan. He denied having any such information or attempting to communicate with anyone for that purpose. Petitioner then asserted that he had been "extraordinarily careful" in his dealings with those whose work "would even bring them close to the jury" not to permit any such implication (R. 373a). Although Judges Miller and Gray refused at this time to disclose the specific evidence they possessed, they advised petitioner that it was "substantial" proof that "an important attempt has been made on your part to contact and improperly influence a juror by the name of Elliott" (R. 375a). Petitioner replied that he had not engaged in any attempt improperly to influence Elliott (R. 377a). He was advised that a show cause order would be entered and he would be

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<sup>2</sup> The judges disqualified themselves from petitioner's criminal trial, which was presided over by Judge Marion S. Boyd, of the Western District of Tennessee (R. 115a).



given an opportunity to respond to the evidence on November 25. Petitioner was given the option of a closed or open hearing, and he chose the former (R. 377a-379a).

On the following day, November 16, petitioner appeared with counsel in the chambers of Judge Gray. He requested information concerning the basis for the show cause order which had been issued (R. 382a). Judge Gray advised him that Vick had supplied an affidavit on November 8, and that the judges had thereafter authorized the government to send Vick back with a tape recorder strapped to his person. Petitioner was advised that the judges had been furnished with a transcript of a tape recording of the conversation of November 11 and had heard the recording itself (R. 383a-384a).

On November 19, 1963, petitioner appeared at his own request before Judge Miller in lieu of a hearing on the show cause order (R. 385a-386a). After stating that no promises or inducements had been made to him by any person and that his statement was completely voluntary, petitioner said that he owed the court a full and complete statement and that he thought the best thing to do was to disclose the entire incident chronologically (R. 387a). He said that on or about November 1, Vick, who had been harassed because of his services in connection with the earlier trial, asked for further employment, saying that he was going to lose his job anyway when the then impending Hoffa trial was over. Petitioner said that he needed to complete his analysis of the jury panel as to race, employment and religion, as he planned

a challenge to the array, and gave Vick the last seventy-five names to investigate. Vick thanked him and said, "Tom, I have a cousin on that jury. Should I talk with him?" Petitioner told him not to do so, that he had been in trouble enough (R. 388a-389a).

Either during that meeting or during a subsequent one, according to petitioner's account, Vick asked to talk with petitioner outside. When they went outside, Vick said that his cousin was a member of the Communications Workers of America and that he "could talk to this man and see what he would do on the jury" (R. 390a). Petitioner stated that he told Vick not to do so and that if the juror was a union man he would probably be challenged by the prosecutor. Vick then asked if it would be all right for him to talk to his cousin if he should happen to run into him. Petitioner, maintaining that he "was susceptible to this thing. I was conditioned for it," told Vick that he did not suppose there would be any harm in that (389a-390a). About three days later, Vick reported that he had talked with his cousin. The cousin had said that the juror in the earlier Hoffa trial who had turned down \$10,000 was a fool and that he would have taken the money. Petitioner told Judge Miller that he replied to this that "[i]f anybody were really going out to try to bribe a juror they wouldn't \* \* \* just walk up and say I will give you \$10,000.00. \* \* \* What any sensible person would do would be to not be the aggressor to try to fix a figure. \* \* \* you would have to feel your way and if they said they wanted \$1,000, you could agree to \$1,000, \* \* \* then the way to do it would be to say,

well, we'll give you \$1,000, when you are seated and give you \$1,000 when the trial is concluded. \* \* \* Now, that is the only way that it would be done." (R. 391a-392a).

According to petitioner's version, Vick said, as he left, that he was going to talk to the juror and petitioner responded, "Don't go talk to him. Don't rush the thing. You are going to draw attention to himself and to you" (R. 392a).

Vick returned, petitioner said, about three days later, saying that his cousin wanted \$10,000, \$5,000 to be paid when he was seated and \$5,000 when the trial was over. Petitioner replied, "Well, now, that is all right." Then they talked generally about the jury and perhaps petitioner said some things to encourage Vick's cousin to make a deal. Petitioner also said he told Vick, "Now tell him not to worry. That there will be other people with him on the jury" (392-393a). Petitioner also said that there was no general plan to approach jurors. Judge Miller inquired what petitioner meant by his reference to "other people." Petitioner explained that this was said to encourage the cousin "to make a deal," but that it was a lie since he had no way of knowing who was going to be on the jury. When asked whether he intended to carry out the bribery of the juror, petitioner said that his thinking had not reached the question of what to do if the juror were seated. He denied that he had any intention of seeing it through, but hoped and prayed that he himself would "come to [his] senses" and challenge the man. Petitioner asserted that he

was so exhausted from the prior trial that he was "susceptible" to Vick's suggestion (R. 396a-398a).

c. At his trial, petitioner's testimony regarding his meetings with Vick was substantially similar to the version he had told Judge Miller. See R. 460a-466a. He explained that he had denied having these conversations with Vick when he first appeared before the judges because he was trying to protect Vick (R. 467a-468a). Petitioner also testified that Vick had reported to him that he had been harassed by the government for his investigative work during the prior trial, and that he had promised Walter Sheridan of the Department of Justice that he would no longer work for petitioner (R. 456a-458a). Petitioner said that Vick came to him on October 28, 1963, and "begged" for a job, and that he was then assigned 75 jurors to investigate (R. 458a). It was then, according to petitioner's testimony, that Vick said he had a cousin on the jury list, and that petitioner told him not to talk to the cousin (R. 459a-460a).

2. Vick testified that in the summer of 1963 he had been employed by the police department of the City of Nashville at the city's workhouse. He was advised that because of the private investigations he had done during the 1962 trial he would not be reemployed when the workhouse staff was transferred to the sheriff's office under the recently adopted metropolitan form of government (R. 214a-216a). He arranged to speak with Walter Sheridan of the Department of Justice. When they met, the first thing Sheridan asked Vick was whether "they were going to attempt to tamper with the jury that was going to



try Mr. Hoffa \* \* \*” (R. 215a). Vick inquired whether Sheridan believed that “they had tampered with the last one \* \* \*.” When Sheridan replied that he did, Vick responded, “Well, that should be sufficient answer for you.” Sheridan then asked Vick to tell him if he knew of any violations of law. Vick then related that an attempt had been made during the earlier trial to communicate, through a lawyer named Beard, with the husband of a juror in that case (see pp. 20-21, *infra*). After providing this information, Vick asked whether he could “get a clean bill of health from the Government” for purposes of his city employment.<sup>3</sup> Sheridan responded affirmatively (R. 215a-216a).

During the same meeting, Sheridan asked Vick to report to him any information concerning illegal activities of which he might become aware (R. 166a, 216a). Sheridan specifically told Vick that he was not interested in information other than that concerning illegal activities (R. 166a, 199a, 215a). Vick did not tell Sheridan that he was going to do anything, nor did Sheridan request him to become a federal employee or to do anything other than report illegal activities (R. 226a-227a). The instruction that he was to report nothing other than illegal activities was given to Vick on each occasion when he and Sheridan met (R. 167a). Vick was not paid or promised anything for the information he provided (R. 214a, 230a).

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<sup>3</sup> Vick explained in cross-examination that the sheriff had told him that “something might come out [because of his participation in the Hoffa case] that would cause a bad reflection on the Sheriff’s Office” (R. 221a).



Vick and Sheridan met on two or three other occasions in August or September 1963 (R. 167a). On November 7, 1963, Vick called Sheridan in Washington with the information concerning petitioner's request to him that he see juror Elliott and "get him on our side" (R. 201a, 217a). Sheridan immediately came to Nashville (R. 167a).

Vick stated on cross-examination that he had reported to an F.B.I. agent in February 1963—several months before his first meeting with Sheridan—that another investigator and he had made a trip to Columbia, Tennessee, in connection with an investigation dealing with the background of the foreman of the grand jury (R. 250a, 253a). He also testified that on June 3, 1963, he had advised the Federal Bureau of Investigation that he had been hired by petitioner to work on the forthcoming Hoffa trial (R. 256a-257a). Vick denied that his employment with petitioner was part of an arrangement with the government, but testified that he had offered in June 1963 to supply information in exchange for protection from prosecution (R. 258a-259a). The F.B.I. responded that since he was in the employ of an attorney for indicted defendants, it would not solicit information from him or direct his activities (R. 251a).<sup>4</sup>

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<sup>4</sup> Vick did not, as petitioners assert, deny that "he had [any] connection with the Department of Justice until November" (Pet. Br. 6-7). What he did say was to deny that he became a "government agent in May of 1963" (R. 142a), a statement which is entirely consistent with our summary above. See also R. 226a, where Vick testified that he was not sure that he had "ever been a government agent."

3. Petitioner was acquitted on count two of the indictment (see note 1, *supra*), but since the evidence introduced with respect to that count relates to some of the issues raised here, we summarize it briefly:

Harry Beard, formerly a member of the Tennessee bar practicing in Lebanon, Tennessee, testified that, prior to the 1962 Nashville trial, he had been hired by the defense to make an investigation of the background of the jury panel (R. 11b-14b). After the trial began, he met with Vick and with Fred Ramsey, another investigator who had been doing similar work for the defense. *Inter alia*, they discussed Mrs. Harrison, who was a juror in the Nashville trial. At the suggestion of Ramsey and Vick, Beard visited petitioner at his office (R. 15b-16b). After an exchange of pleasantries, Beard told petitioner "that some of them on the jury would ruin him on the case, because some of the people were highly prejudicial one way or the other." Petitioner asked whether Beard knew Mr. Harrison. When Beard said he did, petitioner asked if Beard would see Mr. Harrison and tell him that if he would get his wife to vote for acquittal, petitioner would give him \$10,000 (R. 16b-17b). Beard testified he was "astounded and appalled," but replied that he would see about the situation. A day or two later, to extricate himself from the matter, Beard told petitioner that he had been unable to see Harrison. Petitioner responded that there were "a lot of people interested in Mr. Hoffa being acquitted." Thereafter, without seeing Harrison, Beard returned to petitioner and represented that Harrison

wanted \$50,000, a sum which Beard believed would be refused (R. 18b). Petitioner's reply was, "I will have to see Mr. Hoffa." Two or three days later, petitioner told Beard that Hoffa would not agree, and Beard responded, "Fine. Forget it" (R. 19b). Beard testified that he did not disclose these discussions with petitioner to the court because he was afraid for his own safety and that of his family (R. 17b-19b). Vick also testified that he and Ramsey had talked with Beard about the Harrisons in order to get Beard to talk to Harrison about his wife's voting for acquittal or seeing to it that there was a hung jury (R. 42b-44b).

Petitioner testified that he had spoken to Beard about the Harrisons to determine whether it was true that Mr. Harrison was an alcoholic. According to petitioner's testimony, Beard said, in the course of the conversation, "You can guarantee Mrs. Harrison for \$20,000" and petitioner responded by pointing out that the jury was sequestered and could not be reached. Beard, according to petitioner's testimony, returned on later occasions with similar offers, each of which petitioner rejected (R. 491a-497a).

#### SUMMARY OF ARGUMENT

##### I

Petitioner's objections to the admission of the tape recording were correctly overruled by the district court. Vick had been invited into petitioner's office, and petitioner concedes that he was free to divulge the contents of their conversation. The recording which was introduced in evidence merely corroborated

Vick's voluntary disclosures and testimony concerning petitioner's statements to him. The device recorded no more than what Vick said and heard and it did not, therefore, invade the privacy of the office to any greater extent than did Vick himself. While the basic issue regarding the lawfulness of the recording was settled by *Lopez v. United States*, 373 U.S. 427, this case is even stronger than *Lopez* because judicial authorization was sought and obtained before the recording was made.

In authorizing the recording, the district judges were doing no more than a judicial officer does whenever he determines whether there is probable cause to arrest or search. Moreover, since this case involved an officer of the court and the integrity of a prospective trial, the judges had a particular obligation to determine whether Vick's allegations were truthful. They acted with no impropriety whatever when they authorized the recording and subsequently—as part of a disbarment proceeding—listened to the recording and interrogated petitioner. And since both of the district judges disqualified themselves from presiding at petitioner's trial, there can be no contention that the trial was unfair.

## II

According to Vick's testimony, which the jury was entitled to believe, he said no more to petitioner before petitioner made the suggestion that he engage in an unlawful approach than that he knew some members of the prospective jury and was related to one of them. Those statements did not even amount to an invitation to engage in unlawful conduct, much less

to entrapment as a matter of law. What happened *after* petitioner's initial unlawful suggestion cannot establish the defense of entrapment; Vick's activities at that stage merely afforded petitioner the opportunity to continue on his course of criminal conduct under circumstances susceptible of proof.

### III

Petitioner's present objections to the instructions on entrapment were not made at trial and clearly do not amount to "plain error" within the meaning of Rule 52(b), F.R. Crim. P. At all events, the jury was entitled to consider the evidence pertaining to the second count even if it acquitted petitioner on that count. Petitioner's own version of what happened with respect to that charge had substantial probative value on the question of his disposition to commit the offense alleged in the first count, and his disposition became a legitimate issue by reason of his entrapment defense. Nor was the concluding paragraph of the entrapment instruction rendered incorrect by the judges' use of the word "evidence"; the jury well understood, in the context of the whole instruction, what the intended meaning was.

The government's rebuttal evidence on the entrapment issue was proper. It was appropriate to show the jury how government agents had conducted themselves during the period when evidence was being collected. Vick's affidavit and the judges' testimony also corroborated Vick's version of the facts (which was critical to a determination of the entrapment issue) because it showed what evidence the gov-



ernment had on November 8. Since petitioner asserted that Vick had begun requesting him to authorize an approach on October 28 and many conversations had taken place between that date and November 7, the contents of the affidavit and the testimony of the judges—which shed light on what was known on November 8—were relevant in resolving this issue of credibility. And, in any event, petitioner did not object at trial on the ground which he is now asserting.

#### IV

Petitioner's claim that he committed no violation of the obstruction-of-justice statute because Vick had no intention of speaking to his cousin is based on a fundamental misapprehension regarding the law of attempt. The overwhelming weight of authority supports the proposition that petitioner's misconception regarding Vick's state of mind does not exonerate him on a charge of attempt. The few cases on which petitioner relies have been severely disapproved, represent a distinct minority view and are, in any event, distinguishable.

Moreover, the law of attempt is inapplicable here. This Court observed in *United States v. Russell*, 255 U.S. 138, that by using the word "endeavor" in 18 U.S.C. 1503, Congress intended to do away with the technical rules governing attempts and to reach every effort to achieve the unlawful purpose. Petitioner here plainly had the intention of achieving the purpose prohibited by the obstruction-of-justice statute, and he sought to enlist Vick in furtherance of that

aim. Such conduct was precisely what 18 U.S.C. 1503 was intended to prohibit.

### ARGUMENT

#### I

#### THE TAPE RECORDING WAS PROPERLY ADMITTED IN EVIDENCE

Petitioner's initial challenge (Pet. Br. 26-36) is to the admissibility of the tape recording of his November 11 conversation with Vick. Implicit in petitioner's contentions is the premise that there was some impropriety by government officials in directing that the recording be made. For the reasons stated below, we think it entirely clear that there is no legal merit to either of petitioner's two arguments. But before dealing with them in light of precedent and particularized constitutional analysis, we emphasize briefly the practical situation confronting law enforcement officials on November 8, 1963—when it was decided to seek judicial authorization for Vick to record his next conversation with petitioner.

On that date Robert Vick, a Nashville police official and part-time private investigator, submitted a sworn affidavit in which he alleged that petitioner, an attorney of established reputation, was engaged in an effort to bribe a juror in a case—itsself involving obstruction of justice—set for trial in the district. Unless they were prepared to ignore the statement as totally unworthy of belief, government officials were obliged to conduct further investigations. Whatever doubts may have been entertained as to the reliability of the information, it could obviously not be rejected out-of-hand.

Since a grand jury had already found probable cause to believe that efforts had been made corruptly to obstruct justice in an earlier trial in which petitioner was counsel for the defendant, it was not beyond credulity that similar efforts were being planned for the prospective trial, or even that an attorney of petitioner's reputation might be corrupted into participating or encouraging such attempts. It was vital to determine the truth not merely to punish petitioner if he was guilty or to preserve his reputation if he was innocent; the integrity of the administration of justice in the federal court in Nashville was at stake.

Investigative avenues were obviously limited. According to Vick's affidavit, petitioner had discussed the matter with him alone, and no one else had been privy to the secret they shared. It was plain that the truth could emerge only if the government had unimpeachable proof of the content of further conversations between petitioner and Vick. Any other effort to determine the facts would necessarily be beset by irreconcilable conflicts in testimony between the attorney of impeccable reputation and the less credible policeman and part-time investigator. And while the government might have been reluctant to ~~intrude~~ intrude itself upon a private conversation between the two parties against the wishes of both, Vick was perfectly willing to carry on his person a device which would record the conversation and thereby allow government agents to determine the truth of his story. It was in these circumstances that government counsel, who personally disbelieved Vick's report (R. 658a), sought permission from the district judges to attach a device to

Vick's person and to record the next meeting between petitioner and Vick. To secure the recording against forgeries and alterations, the device was attached under the supervision of F.B.I. agents who took possession of the tape immediately after Vick's meeting with petitioner.

Although we confine our arguments below to establishing that this course did not violate any of petitioner's constitutional rights, we are not content to rest on that conclusion alone. We believe that in the circumstances of this case the decision to seek judicial authorization and thereafter to have Vick record his conversations with petitioner was sound and proper, and does not, in any respect, warrant censure or disapproval. This Court's observation in *United States v. Ventresca*, 380 U.S. 102, 111-112, applies fully here:

\*\*\* This Court is equally concerned to uphold the actions of law enforcement officers consistently following the proper constitutional course. This is no less important to the administration of justice than the invalidation of convictions because of disregard of individual rights or official overreaching. In our view the officers in this case did what the Constitution requires. \*\*\* It is vital that having done so their actions should be sustained under a system of justice responsive both to the needs of individual liberty and to the rights of the community.

A. THE RECORDING DID NOT VIOLATE PETITIONER'S FOURTH OR FIFTH AMENDMENT RIGHTS

Petitioner's Fourth and Fifth Amendment challenges to the lawfulness of the recording are squarely controlled, we submit, by *Lopez v. United States*, 373 U.S. 427. This case, like *Lopez*, concerns use of an electronic device not to eavesdrop on a conversation between parties who believed their communications were private but to make an accurate record, at the instance of one of the parties, of a conversation which that party was free to reveal and about which he ultimately testified. Accordingly, petitioner's request that this Court reconsider *Olmstead v. United States*, 277 U.S. 455, and *Goldman v. United States*, 316 U.S. 129 (Pet. Br. 20, 27-28), which involved third-party intrusions on conversations which the participants believed to be private, is inappropriate here.

Petitioner does not challenge the admissibility of Vick's testimony; he concedes that "[p]etitioner may have assumed the risk that his conversations with Vick would be divulged \* \* \*" (Pet. Br. 30). We submit that if Vick's direct testimony was admissible, the objection to the recorded version of the selfsame conversations must fall. Petitioner's claim was analyzed by this Court in *Lopez* (373 U.S. at 439):

Stripped to its essentials, petitioner's argument amounts to saying that he has a constitutional right to rely on possible flaws in the agent's memory, or to challenge the agent's credibility without being beset by corroborative evidence that is not susceptible of impeachment. For no other argument can justify excluding an accurate version of a conversation



that the agent could testify to from memory. \* \* \*

1. *Vick's presence did not violate any right of privacy*

Petitioner does not directly attack the admissibility of Vick's testimony on Fourth Amendment grounds. Since a related question is raised, however, in *Lewis v. United States*, No. 36, this Term, and in *Hoffa et al. v. United States*, Nos. 32-35, this Term, we believe it appropriate to discuss the issue briefly insofar as it affects this case.

For the reasons stated in greater detail in our brief in *Lewis*, we believe that the Fourth Amendment is not violated when a person acting in an undercover governmental capacity converses or has face-to-face dealings with an individual who is engaged or is planning to engage in criminal conduct. As we demonstrate in our brief in *Lewis*, this Court has repeatedly recognized that certain stratagems are necessary for the detection, apprehension and conviction of those who violate the criminal law. Pretending that one is a confederate in crime is a reasonable and inoffensive technique which law enforcement officials have always been permitted to use in gathering information and evidence. A civilized society may fairly impose on its members the risk that those with whom they deal may not be as faithful as they seem. Betrayal by a pretended friend is, as Mr. Justice Brennan observed in his dissenting opinion in *Lopez v. United States*, 373 U.S. 427, 465, a risk which "is probably inherent in the conditions of human society. It is the kind of risk we necessarily assume whenever we speak."

When petitioner confided in Vick on November 11, he trusted Vick not to disclose the contents of their conversation. The fact that his trust was misplaced does not entitle him to bar Vick's testimony. That was settled conclusively in *Lopez* and was, apparently, a proposition on which the entire Court agreed. See 373 U.S. at 438, 442, 450, 465. Petitioner attempts to distinguish *Lopez* on the ground that the witness in that case was known to be a federal agent whereas in the present case petitioner did not know that Vick was reporting to the government (Pet. Br. 28). The distinction is unsound, however, because the essential nature of the deception was the same in both cases—the witness represented that he was prepared to join in the unlawful venture. Consequently, even though the witness in *Lopez* was initially known to be a federal agent, his representations—like those of Vick—induced the defendant to believe that his statements would not be disclosed.

Nor does the fact that they spoke in petitioner's office cloak the conversation between petitioner and Vick with any form of privilege. As we demonstrate in our brief in *Lewis*, in circumstances such as these the site of the conversation is legally irrelevant because the speaker is not relying on the privacy of the locale to silence the auditor; he commits his secret to his listener, wherever they may be conversing, with full knowledge that the latter is free to repeat what he has heard. Indeed, in this case petitioner and Vick left petitioner's office and went "outside" on the prior occasions—November 7 and 8—when they

wished to discuss the juror approach in greatest privacy (R. 201a, 203a).

Consequently, the fact that Vick came to petitioner's office on November 11 and there represented that he was interested in furthering petitioner's illegal scheme does not taint his testimony concerning petitioner's statements to him. For, as was true of the agent in *Lopez*, "[h]e was in the office with petitioner's consent, and while there he did not violate the privacy of the office by seizing something surreptitiously without petitioner's knowledge." 373 U.S. at 438. There was, in short, no probing of the secrets of the room. Petitioner is complaining not because something secreted in his private office was brought to light but simply because Vick repeated statements which could have been made to him anywhere but happened to be made in petitioner's office.

Nor, in these circumstances, can it be argued that petitioner's secret thoughts were unfairly extracted from him by means of Vick's subterfuge. Vick's testimony (and the corroborative recording) dealt not with admissions concerning some past offense but with communications which were, in and of themselves, the very essence of the offense charged in the indictment. The endeavor to obstruct justice could be executed by petitioner only by communicating with Vick as he did. Hence it cannot be claimed that Vick's conduct violated the Fifth Amendment by "secretly tak[ing]" from petitioner disclosures which

would not otherwise have been made (Pet. Br. 27-28).<sup>5</sup>

2. *The presence of the recording device did not violate any right of privacy*

Here, as in *Lopez*, the claim regarding the admissibility of Vick's recording "emerges in proper perspective" (373 U.S. at 438) once it is shown that there was no infirmity whatever in Vick's testimony. For, as in *Lopez*, the recording was merely "the most reliable evidence possible of a conversation in which the Government's own agent was a participant and which that agent was fully entitled to disclose." 373 U.S. at 439. The device was carried into the room

<sup>5</sup> The *amicus* brief of the American Civil Liberties Union argues that the Fourth Amendment was violated here because the government did not, prior to Vick's first meeting with petitioner, present evidence to a judicial officer demonstrating probable cause to believe that petitioner would commit an offense. In effect, the *amicus* argues that the equivalent of a warrant is constitutionally required before the government may employ the services of an informant. The rule is obviously not required by the language of the Fourth Amendment, however, and it finds no precedent in the history of its administration. Its wisdom is, we submit, properly a matter for legislative consideration, not for judicial decision. And it is surely inappropriate to apply such a novel rule—which government counsel could not have anticipated—retroactively to invalidate a conviction. Moreover, whatever the merits of the suggestion—and we submit that it rests on unrealistic premises regarding law enforcement and the use of informants and on unsound assertions regarding the Fourth Amendment—it is plainly insubstantial as applied to the facts of this case. Here the government had previously been told by Vick that he and another investigator had been used by petitioner as intermediaries in an earlier attempt to approach a juror. If probable cause be required, Vick's earlier reports met that standard.

by Vick and it did no more than to record mechanically what Vick said and heard. Consequently, it intruded on the privacy of petitioner's office to no greater extent than did Vick himself; and, as we have shown, Vick's presence infringed upon no constitutional protection.

Petitioner urges that the *Lopez* decision be reconsidered insofar as it held that the presence of the recording device in the defendant's office was not a violation of the Fourth Amendment (Pet. Br. 20, 29-30). We submit, of course, that *Lopez* was correctly decided, but we maintain, in addition, that the circumstances of this case satisfy the standards announced by the concurring and dissenting opinions in *Lopez*.

First, we note that the elements which, in the view of the Chief Justice, distinguished *Lopez* from *On Lee v. United States*, 343 U.S. 747, are present here as well. The recording in the present case was not used "to obviate the need to put [Vick] on the stand" (373 U.S. at 443) as was true in *On Lee*; it was used to corroborate the testimony of the person whom the defendant invited to enter his premises and to whom he spoke, as in *Lopez*. In addition, the recording was not used for at-large investigation. The recording in *Lopez* had the justifiable public purpose of "protect[ing] the credibility" of Internal Revenue agents against "outright denials or claims of entrapment \* \* \* which, if not open to conclusive refutation, will undermine the reputation of the individual agent for honesty and the public's confidence in his work." 373 U.S. at 442. The recording here was needed, as



well, to support the credibility of Vick against similar denials and claims. Like the agent in *Lopez*, Vick was faced with the situation where "proof of an attempted bribe [was] a matter of [his] word against that of [petitioner] \* \* \*." *Ibid.* It was fair here, as it was in *Lopez*, for the witness to "support his credibility with a recording." *Ibid.*

*Second*, the serious dangers of electronic eavesdropping which the *Lopez* dissenters described are a far cry from the facts of this case: This is not a case of "pervasive" eavesdropping by outlandish devices (373 U.S. at 467-468); an ordinary small tape recorder was used to provide a permanent record of a single conversation. There is no suggestion that "faking" of any kind was involved (373 U.S. at 468); the tape was concededly accurate (p. 12, *supra*). There is no basis for believing that any State regulatory scheme was violated (373 U.S. at 468-469). The legitimate need for the recording to determine whether there was any basis for Vick's allegation can hardly be gainsaid (see pp. 25-27, *supra*; 373 U.S. at 469). The recording cannot be deemed "indiscriminate" surveillance (373 U.S. at 463); it was limited to a single conversation on a single subject. Nor can it be characterized as "an electronic seizure \* \* \* [of] mere evidence" (373 U.S. at 463); the statements made by petitioner were as much "instrumentalities of crime" as words can ever be; they constituted the very nub of the offense.

*Third*, if any procedure could ever be the equivalent of obtaining a warrant for an electronic search—which the dissenters believed essential in *Lopez* (373

U.S. at 463-465)—it was the procedure followed by government counsel in this case. Having received evidence from a reliable source\* that bribery of a juror was being planned, government counsel submitted the affidavit of the informant to two federal district judges and sought permission to have a particular conversation recorded under very scrupulous safeguards. The judges read the affidavit and authorized the recording. This, we submit, surely satisfied "the procedure of antecedent justification before a magistrate that is central to the Fourth Amendment \* \* \*." *Ohio ex rel. Eaton v. Price*, 364 U.S. 263, 272. The fact that no formal warrant issued is attributable, we submit, to the novelty of the procedure—which was unique in its protection of petitioner's rights—and should not invalidate the subsequent "seizure" of petitioner's statements.

Petitioner's real objection to the recording is that it rendered perjury futile. In speaking privately with Vick, petitioner supposed that he was assuming little risk. As he told Vick (p. 11, *supra*): "We'll keep it secret. The way to keep it safe is that nobody knows about it but you and me—where could they ever go?" Petitioner was apparently planning to deny having made such statements if Vick should ever disclose that he did so. Indeed, outright denial was

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\* It should be remembered that Vick supplied information in July or August dealing with the contemplated approach to juror Harrison (pp. 18, 20-21, *supra*). Investigation of that information apparently produced the testimony of Beard, who was a government witness in this case (R. 11b-19b). It is fair to say, therefore, that Vick had provided reliable information.

his immediate response to questioning by the judges (p. 13, *supra*). His expectation was that the matter would then become, as petitioner's brief characterizes it now, a test of veracity between "an untrustworthy informer and a reputable professional man" (Pet. Br. 24)—a swearing contest in which the participants would be "a professional man of reputation, and \* \* \* an untrustworthy and essentially slimy character" (Pet. Br. 48). This apparent plan emphasizes the importance of permitting, in appropriate circumstances, the evidence provided by recordings. We believe, as the Chief Justice suggested in the *Lopez* case (373 U.S. at 442), that there is an important public policy supporting the use of recording devices to protect persons in Vick's position against unwarranted attacks on their credibility.

#### B. THE JUDGES' AUTHORIZATION OF THE RECORDING WAS PROPER

Petitioner's second challenge to the admissibility of the recording is based on the rather unusual premise that it was improper for government counsel to seek and obtain judicial authorization before permitting Vick to record his conversations with petitioner. In making this argument, petitioner mistakes a virtue for a vice.

As we have shown, and as the court of appeals apparently concluded (R. 56, n. 1), the presentation of Vick's affidavit to the judges and the request for authorization to engage in limited recording was analogous to the procedures followed in obtaining a search warrant. Hence the judges' participation here—like prior judicial authorization of a search or

an arrest (cf., *United States v. Ventresca*, 380 U.S. 102; *Aguilar v. Texas*, 378 U.S. 108, 110-111; *Jones v. United States*, 362 U.S. 257, 270-271; *Johnson v. United States*, 333 U.S. 10, 14)—is to be favored rather than disapproved. It would be anomalous, indeed, if under a system of law which prefers “the informed and deliberate determinations of magistrates empowered to issue warrants \* \* \* over the hurried action of officers \* \* \* who may happen to make arrests” (*United States v. Lefkowitz*, 285 U.S. 452, 464), the recording in this case were held improper because that “informed and deliberate determination” was sought before the action was taken.

Petitioner’s contention that the judges “stepped down into the arena to track down suspected offenders \* \* \*” (Pet. Br. 35) is patently unsound. The judges here did no more in authorizing the recording than any magistrate does in approving an application for a search warrant. The warrant, like the authorization in this case, may produce evidence which is usable at a trial. But both the search and the recording serve legitimate purposes other than the collection of evidence. In the case of the warrant instrumentalities and fruits of crime or contraband are seized; the recording here “seized,” as it were, the statements which were the instrumentalities of the offense and established whether or not an offense was in fact being committed.

Petitioner’s assertion that it was improper to play the recording for the judges after it was made (Pet. Br. 32-33) is both irrelevant and unsound. It is irrelevant because what was done with the recording



after it was made does not affect its admissibility in evidence. Even if it were improper to have played the recording for the judges, that would not retroactively change the circumstances under which the recording was made. And only those circumstances determine its admissibility. *United States v. Mitchell*, 322 U.S. 65, 70-71.

The assertion is also unsound because, on the facts of this case, the judges had a unique function to perform. They had been shown an affidavit making serious allegations, affecting the integrity of the administration of justice, against an officer of the court, who was representing a defendant in a prospective trial. It was, therefore, their duty to seek out the truth and, if necessary, to discipline counsel. See *Ex parte Burr*, 9 Wheat. 529, 531; *Ex parte Secombe*, 19 How. 9, 13; *Ex parte Wall*, 107 U.S. 265, 273, 288-289. The results of their investigation may have contributed to petitioner's conviction of a criminal offense, but that did not disable the judges from conducting an inquiry to determine whether petitioner should be disbarred. The hearings before the district judges (pp. 13-17, *supra*) were, in fact, part of a disbarment proceeding which is now pending in the court of appeals. The judges were obliged to conduct that proceeding in order to protect the court as an instrument of justice. See *In re Isserman*, 345 U.S. 286, 289; see also *Theard v. United States*, 354 U.S. 278, 281; *Bradley v. Fisher*, 13 Wall. 335; *Ex parte Robinson*, 19 Wall. 505, 512; *Ex parte Bradley*, 7 Wall. 364, 374; *Randall v. Brigham*, 7 Wall. 523, 540. In relation to that proceeding they properly heard the tape record-



ing of the conversation between Vick and petitioner.

We note again that both judges disqualified themselves from trying the charges against petitioner, and that a district judge from the Western District of Tennessee was specially designated for this trial (R. 154a). What Judges Miller and Gray did in November 1963 was entirely proper and necessary in the circumstances to preserve the integrity of the district court.

## II

### ENTRAPMENT WAS NOT ESTABLISHED AS A MATTER OF LAW

Petitioner's claim that the entrapment issue should not have gone to the jury because entrapment was established as a matter of law (Pet. Br. 36-41) is refuted by Vick's version of the conversation of November 7, when the plan to approach the prospective juror was hatched. Vick testified as follows (R. 200a-201a):

Well, we were in Mr. Osborn's office discussing the prospective jurors that I was investigating, that is, in Judge Miller's Court, and I mentioned that I knew some members in Judge Gray's court, and Mr. Osborn jumped up and said, "You do?"

And said, "Why didn't you tell me?"

And I said that I had previously told John Polk [another investigator] that I was acquainted with some of the jurors in Judge Gray's Court. Then we discussed about whether to discuss it in his office or not, and we went outside and discussed it, and he said—I told him the juror Elliott was a cousin of mine, and that—and he told me to go down to

Springfield and get him on his—our side, and talk to him, and see what, if any, arrangements could be made, or something like that, about the case, this, that and the other.

This testimony was consistent with what Vick had testified to on the motion to suppress<sup>7</sup> and with the

<sup>7</sup> Vick gave the following testimony during the hearing on that motion (R. 21b-22b):

"Q. Now, in this conversation on November 7—prior to this conversation of November 7, did you ever make any suggestion to Mr. Osborn in any shape, form or fashion that you contact a juror?

"A. No, sir.

"Q. None whatever?

"A. No, sir.

"Q. All right. In this conversation did you tell Mr. Osborn that you had a cousin on the prospective Hoffa jury panel?

"A. Yes, sir, I did.

"Q. Did you tell him his name?

"A. Yes, sir.

"Q. His name was Mr. Ralph A. Elliott?

"A. Yes, correct.

"Q. At this time did he ask you to go talk to Elliott to get him on your side?

"A. Yes, sir.

"Q. He wanted him on the jury?

"A. Yes, sir, he did.

"Q. To sit down with him and talk to him or get him on the jury—or go contact him right away, sit down, talk to him, get him on our side, we want him on the jury?

"A. Yes, sir, that is correct.

"Q. Was that the subject of the conversation?

"A. Yes, sir.

"Q. You did not initiate that conversation whatsoever?

"A. No, sir."

In response to defense questioning Vick testified (R. 131a-132a, 139a-140a):

"Q. Then, as I understand you, the first conversation you ever had about the Juror Elliott with Mr. Osborn was occasioned by Mr. Osborn, you had not discussed him with anybody connected with the Government?

contents of the affidavit he submitted on November 8.  
Vick's story, in substance, was that he had said nothing more to petitioner to suggest an improper

"A. I don't think I had, Mr. Norman.

"Q. All right. Did you devise a plan to pretend to Mr. Osborn that you were going to talk to the Juror Elliott.

"A. I did not devise any plan at all, Mr. Norman.

"Q. Well, you propositioned him about talking to Elliott, didn't you?

"A. No, sir, I did not.

"Q. You mean he propositioned you about it?

"A. Yes, sir."

"Q. All right, sir. When you went to Mr. Osborn's office, did you intend to pretend you wanted to talk to the Juror Elliott, whether Osborn employed you or not?

"A. No, sir.

"Q. Only on—if he employed you, is that right?

"A. I didn't pretend at that time to talk about any juror, Mr. Norman.

"Q. Well—

"A. Other than the ones he had hired me to investigate."

"Q. I will ask you if it was not your whole purpose in coming to Mr. Osborn's office to persuade him to agree to a deal you would pretend you would go to the juror Elliott?"

"Q. From the time you talked with Mr. Sheridan, I mean, after—the whole thing—all of them—wasn't it in order to persuade Mr. Osborn to join in the pretense that you had about seeing Elliott?

"A. I never tried to persuade Mr. Osborn in anything, Mr. Norman.

"Q. Well, why did you tell him then, that you had already been to see Elliott?

"A. He had asked me to go see him."

\* The relevant portion of the affidavit read as follows (R. 654a-655a):

"On November 7, 1963, I was in Mr. Osborn's office going over the results of my investigation. I was aware that the

approach than that he knew three people on the jury panel and that one of them was a cousin.

Petitioner's version differed in various respects. He testified that immediately upon being given a list of jurors to investigate on October 28, Vick had said, "Tommy, I have a cousin on Judge Gray's jury." After petitioner responded that he hadn't known that fact, Vick said—according to petitioner's testimony—"This cousin and I are close. I could talk with him if you wanted me to." Petitioner testified that he responded, "Now, Bob, you have been in trouble enough. I don't want you to do that. You stick to these 75 names and let that be the end of it" (R. 459a-460a). According to petitioner, Vick returned several

jury panel which I had been investigating was the panel assigned to Judge William E. Miller. Mr. Osborn and I got into a discussion of the jury panel assigned to Judge Frank Gray, Jr. This jury panel list had previously been shown to me by John Polk, an investigator for Mr. Osborn. Polk told me at that time that he was investigating the jury panel assigned to Judge Gray. At that time, I mentioned to Polk that I knew three of the people on the jury panel. In discussing the panel with Mr. Osborn, I again mentioned that I knew three of the people on the jury panel. Mr. Osborn said, 'You do? Why didn't you tell me?' I told Mr. Osborn I had told John Polk and assumed that John Polk had told him. Mr. Osborn said that Polk had not told him and suggested that we discuss the matter further. We then left Mr. Osborn's office and walked out onto the street to discuss the matter further. Mr. Osborn asked me how well I knew the three prospective jurors. I told him that I knew Mr. Ralph A. Elliott, Springfield, Tennessee, the best since he was my cousin. Mr. Osborn asked me whether I knew him well enough to talk to him about anything. I said that I thought I did. Mr. Osborn then said, 'Go contact him right away. Sit down and talk to him and get him on our side. We want him on the jury.' I told Mr. Osborn that I thought Mr. Elliott was not in very good financial position and Mr. Osborn said, 'Good, go see him right away.'



days later with the same suggestion. Petitioner first told him not to talk to his cousin, but later said that if he really ran into him "by accident," it would be all right (R. 462a-463a).

The jury was, of course, entitled to believe Vick's testimony. *Masciale v. United States*, 356 U.S. 386. It could, therefore, conclude that upon hearing nothing more than that Vick knew several people on the jury panel petitioner had "jumped up" and gone outside with Vick to explore the possibilities of a corrupt approach to a juror. The jury was also entitled to conclude that petitioner needed no more encouragement to suggest that Vick speak to the prospective juror and make arrangements to "get him on our side" than the knowledge (which he gained while they were "outside") that the juror was a cousin of Vick.

Thus reduced to its essentials, petitioner's claim is that the mere statement, "I know some members of the jury" and the elaboration, "One of the jurors is a cousin of mine" are such glittering temptations to an attorney that he should not be expected to resist the opportunity to obstruct justice by offering a bribe. Obviously, that cannot be the rule. Vick's statements regarding his acquaintance and family relationship with jury members can hardly be considered a "trap for the unwary innocent" (*Sherman v. United States*, 356 U.S. 369, 372), which is the earmark of genuine entrapment. Only an individual who is searching for a juror to bribe would treat these statements as a solicitation. This case is a far cry from *Sherman v. United States*, 356 U.S. 369, where the undisputed testimony showed that the resistance of an unwilling



former narcotics addict had been overborne by repeated requests and appeals for sympathy by a government informant. In this case no resistance whatever was offered by petitioner, nor was any request or solicitation made by Vick. Vick's statements merely provided an opportunity, and that opportunity was father to the act.

The fact that Vick opened the discussion concerning Elliott by making the truthful statement that Elliott was his cousin (R. 201a, 20b), does not mean that all subsequent conversation regarding that subject was the result of entrapment. Jury bribers do not ordinarily advertise in newspapers; they make their offers through intermediaries who are usually acquainted with the jurors to be bribed. By disclosing his relationship Vick merely set the stage; petitioner lost no time in ringing up the curtain and taking the leading role.

Petitioner contends that his offense was the product of Vick's "creative" activity (*Sherman v. United States*, 356 U.S. 369, 372) because Vick returned to him on two occasions after November 7 and falsely represented that he had spoken with Elliott, thereby inducing petitioner to make additional statements in furtherance of his unlawful scheme (Pet. Br. 37-41). This contention overlooks the fact that the offense was begun on November 7, and that consequently the critical issue is what led to petitioner's initial suggestion on that date. What Vick did after November 7 was exactly what the Internal Revenue agent did in *Lopez v. United States*, 373 U.S. 427, 436, i.e., "afford an opportunity for the continuation of a course of crimi-

nal conduct, upon which the petitioner had earlier voluntarily embarked, under circumstances susceptible of proof."

Moreover, petitioner's own testimony, if believed, would not warrant the conclusion that he was entrapped as a matter of law. He conceded that he struggled against the temptation "feebly" or "sickly" (R. 397a, 487a). According to his own story, his only objection to Vick's initial proposal was that Vick had "been in trouble enough" (R. 460a). And petitioner's testimony had him instructing Vick on the subtleties of jury bribery—including the far-from-obvious observation that "any sensible jury briber would be paying half down and half later" (R. 464a).

At all events, the most convincing refutation of petitioner's entrapment claim is the admittedly accurate recording of the conversation of November 11 (pp. 5-12, *supra*). The jury could fairly conclude that it was improbable that the individual who on November 11 (1) began the discussion of bribery by asking, "Did you talk to him?", (2) instructed Vick, "Tell him it's a deal," (3) said, "I think everything looks perfect," (4) imposed the condition that Elliott be "accepted on the jury," (5) demanded that Elliott hang the jury "All the way, now," (6) reassured Vick that another investigator "does not know one thing," and (7) directed Vick how and when he should speak to Elliott again, was, just four days earlier, an innocent person whom Vick lured into an unlawful scheme. And the most persuasive portion of the recorded conversation was petitioner's instruction to Vick to tell

Elliott that "there will be at least two others with him" (p. 11, *supra*). As the court of appeals observed (R. 61), that statement was plainly inconsistent with petitioner's claim that he was a reluctant participant in a scheme which he did not devise. The preceding colloquy indicates that Vick looked to petitioner for guidance, and that petitioner represented that he knew how many of the prospective jurors were to be improperly influenced by the time of the jury's deliberations. And the inferences which may fairly be drawn from the recording are buttressed by the inherent improbability that a layman such as Vick overpowered the law-abiding instincts of petitioner, an attorney of more than 20 years' experience (R. 437a-439a), and beguiled petitioner into participating in a patently unlawful venture.

Finally, there is no merit to petitioner's suggestion that if the views of the separate opinions in *Sorrells v. United States*, 287 U.S. 435, 453, and in *Sherman v. United States*, 356 U.S. 369, 378, were applied to the facts of this case, reversal would be required (Pet. Br. 41). For the government's conduct in this instance did not amount to "lawless means or means that violate rationally vindicated standards of justice." 356 U.S. at 380. The record shows that on November 7, when the illegal scheme was first broached, Vick was acting in the capacity of a private citizen who had been retained by petitioner to investigate jurors.\* He had, it is true, agreed to inform

\* Vick responded correctly on cross-examination that he did not "become a government agent" as a result of his conversations with Sheridan in the summer of 1963 (R. 142a; 226a). It

Sheridan if he learned of any illegal activity, but that agreement was no more than a formal expression of a duty which every citizen owes to organized society. See 18 U.S.C. 4.

In his dealings with petitioner up to and including the crucial date of November 7, Vick had engaged in no material deception. He did not conceal his identity or otherwise practice stealth or misrepresentation. He was doing what petitioner had hired him to do, and the unlawful suggestion was prompted by a truthful observation regarding a prospective juror. The only material disclosure Vick failed to make was that he had agreed to report unlawful activities to the government. That disclosure, we submit, was not required by any constitutional provision or by any principle of the law of entrapment. See *Lopez v. United States*, 373 U.S. 424, 438 (1963), where the Supreme Court held that it was entirely proper for Sheridan to see Vick at that time since evidence of obstruction of justice in the 1962 Nashville trial had then been submitted to a grand jury and was found sufficient to warrant the return of an indictment. It was not unlikely that Vick, who had worked for petitioner as an investigator, had information concerning the endeavors involved in the indictment or others. In fact, Vick did then supply information concerning an endeavor which was not included in the indictment—i.e., the Beard-Harrison approach (pp. 18, 20-21, *supra*).

Having received this information from Vick, Sheridan properly asked if he would transmit information dealing with future illegal activities. Indeed, apart from Sheridan's request, Vick was under a statutory obligation (18 U.S.C. 4) to report known felonies which, with respect to future crimes, would have overridden even the attorney-client privilege. See, e.g., *Clark v. United States*, 289 U.S. 1, 15; *In re Sawyer's Petition*, 229 F. 2d 805, 808-809 (C.A. 7), certiorari denied, 351 U.S. 966. Sheridan carefully and repeatedly cautioned that he was interested only in evidence of unlawful conduct.



*United States*, 373 U.S. 427; *Sherman v. United States*, 356 U.S. at 372; *Masciale v. United States*, 356 U.S. at 387; *Whiting v. United States*, 321 F. 2d 72 (C.A. 1); *United States v. Horton*, 328 F. 2d 132 (C.A. 3), certiorari denied *sub nom. Edgar v. United States*, 377 U.S. 970; *United States v. Bush*, 283 F. 2d 51 (C.A. 6), certiorari denied, 364 U.S. 942; *United States v. Denton*, 307 F. 2d 336 (C.A. 6), certiorari denied, 371 U.S. 923. See also our brief in *Lewis v. United States*, No. 36, this Term.<sup>10</sup>

Indeed, there can hardly be any doubt that even under the standard established in the Model Penal Code,<sup>11</sup> which broadens the scope of entrapment beyond this Court's decisions, Vick's conduct would not be impermissible. For Vick employed no "methods of persuasion or inducement" nor did he conduct himself in any way that could encourage the commission

<sup>10</sup> The law review comment on which petitioner relies (74 Yale L.J. 942) is concerned with solicitations by government agents which induce others to commit offenses.

<sup>11</sup> Section 2.13 of the ALI, Model Penal Code, reads as follows:

"(1) A public law enforcement official or a person acting in cooperation with such an official perpetrates an entrapment if for the purpose of obtaining evidence of the commission of an offense, he induces or encourages another person to engage in conduct constituting such offense by either:

(a) making knowingly false representations designed to induce the belief that such conduct is not prohibited; or

(b) employing methods of persuasion or inducement which create a substantial risk that such an offense will be committed by persons other than those who are ready to commit it."



of the offense by anyone "other than those who are ready to commit it."

### III

#### THE INSTRUCTIONS ON ENTRAPMENT AND THE REBUTTAL EVIDENCE ADMITTED ON THAT ISSUE WERE PROPER

The entrapment defense was, as we have shown, not established as a matter of law. It was, however, submitted for the jury's consideration under proper instructions (R. 697a-698a)—to which the defense made no objection after the instructions were completed (R. 708a).<sup>12</sup> Petitioner now urges, however, that the instructions were improper in two respects and that certain evidence was incorrectly admitted to rebut the defense of entrapment (Pet. Br. 41-50). There is no merit to any of these contentions.

#### A. THE COURT PROPERLY REFUSED TO INSTRUCT THAT THE EVIDENCE AS TO EACH COUNT WAS TO BE CONSIDERED SEPARATELY

At the conclusion of the evidence, petitioner requested an instruction to the jury not to consider as to one count the evidence offered with relation to any other count (R. 711a). The court's refusal of that instruction was, we submit, perfectly correct because, as this Court noted in *Sorrells v. United States*, 287 U.S. 435, 451, an accused who relies on a defense of entrapment "cannot complain of an appropriate and

<sup>12</sup> Petitioner suggests in passing that the entrapment issue might better have been determined by the court than the jury (Pet. Br. 43). That contention was not presented in the court of appeals or in the petition for certiorari. Indeed, petitioner's trial counsel expressly conceded that it was an issue for the jury (R. 651a).

searching inquiry into his own conduct and predisposition as bearing upon that issue." The evidence presented with respect to the second count of the indictment (pp. 20-21, *supra*) would have been relevant and admissible proof bearing on petitioner's predisposition even if he had been tried on the first count alone. Testimony that he sought to communicate with a juror in an earlier case could properly have been considered by the jury in determining whether he had been entrapped by Vick. Consequently, the district judge was right in refusing to give an instruction which would have prohibited the jury from considering that proof in deciding guilt or innocence on the first count.

Petitioner now contends that it was error for the judge not to instruct the jury that if it acquitted petitioner on the second count, it should not consider that evidence with respect to the first count (Pet. Br. 41-43). The short answer to that contention is that no such instruction was ever requested. Rule 30, F.R. Crim. P. The far broader instruction which was proposed would have required the jury to disregard, for purposes of the first count, the evidence pertaining to the second count even if it found petitioner guilty on the second. For the reasons stated above, that instruction was plainly erroneous and was properly denied.

Moreover, the jury's acquittal of petitioner on the second count did not render irrelevant all evidence pertaining thereto. The jury may well have acquitted on the second count because it believed petitioner's version of the events rather than Beard's.

But even petitioner's account had substantial probative value in establishing his disposition to commit the offense alleged in the first count. For, according to petitioner's version, his objection to Beard's proposal was not that it was unlawful or unethical, but that it could not be accomplished because of the jury's sequestration (p. 21, *supra*). Moreover, petitioner testified that he spoke with Beard because he was interested in developing the "potential for leadership" of juror Harrison, who "was probably pro-defense" (R. 490a-491a). The jury could fairly draw its own inferences, in light of petitioner's failure to explain further how he intended to develop this "potential" and why he was interested in the reported alcoholism of the juror's husband (R. 493a-494a), as to what petitioner's real purpose was. Hence even if it accepted petitioner's testimony that it was Beard, and not petitioner, who suggested that the juror be bribed, the jury could consider petitioner's responses and his motive in talking to Beard in determining whether there was substance to the claim that he was later entrapped by Vick.

#### B. THE ENTRAPMENT INSTRUCTION WAS CORRECT

Petitioner challenges the entrapment instruction because of its concluding paragraph which reads (R. 698a):

If on the other hand, you find on the facts and circumstances of this case and on the instructions as here given you by the Court that the evidence aforesaid, including the tape recording, was obtained by lawful means, that is,

that there was no unlawful entrapment, you will find this particular issue against the defendant and your verdict on Count One would be for the Government.

Petitioner's contention turns on the court's use of the word "evidence," the argument being that this improperly left to the jury the question whether or not the tape recording was admissible (Pet. Br. 44-45). This grossly distorts the instruction which, when read in its entirety, leaves to the jury only the question whether petitioner's conduct was the product of impermissible police activity designed to trap an otherwise innocent person. In concluding that entrapment instruction the court directed the jury that if it had a reasonable doubt whether "the evidence" was obtained by means of entrapment, it should acquit petitioner; if, on the other hand, it found that "the evidence \* \* \* including the tape recording" was obtained by lawful methods, it should find petitioner guilty (R. 698a). It was entirely clear to the jury, we submit, that the court was using the word "evidence" as a concise equivalent of "the proof that has been presented to you that the defendant engaged in unlawful conduct." This properly left to the jury the question on which it was supposed to pass—whether petitioner's statements to Vick, *including those on the recording*, were induced by impermissible conduct designed to trap the unwary innocent. If petitioner believed that the jury would be confused by this use of the word "evidence," it was his obligation to assert a timely objection. It is precisely to enable a district judge to correct such slight variations which are



allegedly misleading that Rule 30, F.R. Crim. P., requires that a timely objection be interposed. Petitioner here made no objection whatever. We submit that the instruction was properly understood by the jury and that it could not, in any event, be deemed "plain error" under Rule 52(b), F.R. Crim. P.

C. THE EVIDENCE INTRODUCED IN REBUTTAL TO PETITIONER'S  
ENTRAPMENT DEFENSE WAS PROPER

Testifying in his own defense, petitioner did not deny having spoken to Vick about bribing juror Elliott. His only defense was that Vick had "hooked" him (R. 486a) by repeated urgings prior to November 11 to participate in the unlawful scheme. The theory on which petitioner rested his defense was that Vick "had a firm arrangement with the government that he was to try to get employed by [petitioner] in order to get information" (R. 460a) and that, pursuant to this arrangement, he was so employed and was then directed to entrap petitioner "[t]o take [him] out of the lawsuit" (R. 467a).<sup>13</sup>

In support of his version of the facts, petitioner contradicted Vick's testimony in several important respects. He testified, *inter alia*, that Vick had first mentioned his relationship to juror Elliott on October

<sup>13</sup> Or, as petitioner's counsel put it during a colloquy with the court out of the presence of the jury (R. 555a): "The legal proposition is that the whole thing, from February on, when he started to reporting, that he became a government agent; that the idea of getting employed by Tommy Osborn originated in his mind, and the government agents' mind, and Mr. Sheridan's mind, and that there was a plan to get employed by Tommy Osborn so he could entrap him into a pretended offense, and that the whole thing constituted entrapment."



28, when he was given the jury list, and that on the same afternoon or the next day he returned to petitioner and again suggested that he could speak with prospective jurors (R. 460a-461a). It was at that meeting, according to petitioner's version, that he told Vick that if he really ran into Elliott "by accident," it would be all right to speak with him (R. 463a). Petitioner then testified that three or four days later, but still apparently some time before November 7, Vick returned and reported that he had spoken with his cousin and that Elliott had said that he would take a bribe. It was during this conversation, petitioner asserted, that he had said that "any sensible jury briber would be paying half down and half later" (R. 463a-464a). Petitioner identified a conversation described in Vick's affidavit as having occurred some time later (R. 465a).

It is quite obvious that in passing on petitioner's entrapment defense, the jury was required to evaluate the significance of the recording of November 11 in light of the conflicting testimony regarding Vick's prior course of conduct. It was highly relevant, in this regard, to determine whether Vick's testimony that discussion of juror Elliott began on November 7 was truthful or whether petitioner told the truth when he said that Vick had begun urging an approach to Elliott as early as October 28. Even more significant on this issue was the question of government participation. Petitioner's theory assumed that government agents—particularly Walter Sheridan—had encouraged Vick to seek employment from petitioner and had then stealthily guided Vick's alleged efforts at en-

trapment. The evidence introduced by the government on rebuttal responded to this theory and demonstrated that it was untenable. Since one factual issue bearing upon an entrapment defense is the nature of "the activities of [government] representatives in relation to the accused" (*Sorrells v. United States*, 287 U.S. 435, 451), the rebuttal evidence pertaining to the government's conduct was properly admitted.

1. *The judges' testimony.*—Judges Gray and Miller testified regarding the details of their November 8 authorization of the tape recording. Even though the fact that the judges had authorized the recording had previously been mentioned in the jury's presence,<sup>14</sup> the circumstances under which the authorization was given had never been the subject of direct testimony.

<sup>14</sup> Petitioner asserts that the reading to the jury of one of the disbarment hearings during which Judge Gray advised petitioner and his counsel that the recording had been authorized by Judge Miller and himself had put the authorization "in evidence for all purposes" (Pet. Br. 47). It is true that no limiting instruction was sought or given when the transcript of the hearing was read, but that did not, we submit, establish, under the hearsay rules, the fact of authorization. Petitioner's presence when Judge Gray made the statement may have rendered it admissible to establish that petitioner had been so advised; it is even arguable that his silence (notwithstanding the unusual circumstances) might permit an inference of acquiescence to the extent that petitioner could have had any knowledge. But obviously petitioner could not have known at that time whether or not the recording had been authorized. Hence it would surely have been improper, notwithstanding petitioner's failure to ask for a limiting instruction, for government counsel to have argued to the jury merely from the disbarment transcript that the recording had, in fact, been authorized. For this reason alone it was proper to put the judges on the stand in rebuttal to testify that they had authorized the recording of November 11.

It was relevant to the issue of entrapment for the jury to know what evidence the government claimed to have had in its possession on November 8, when it sought authorization for the recording. It was also relevant for the jury to know—as bearing on the government's conduct—that after the attempted recording of November 8 had failed, government counsel again sought judicial authorization from Judge Miller before recording a second time (R. 660a).

There is no substance whatever to the claim that the judges expressed their views that “petitioner had been proved guilty” (Pet. Br. 49). Their brief testimony (R. 651a–661a) contains no hint of any such finding; they limited their testimony strictly to the circumstances *preceding* the making of the recording. The only question pertaining to a time after the recording was made was when Judge Miller responded, “Yes, sir” to the question whether he had “subsequently heard the tape recording yourself” (R. 660a).

Finally, we note that petitioner did not object to the judges' testimony on the ground now urged. The only grounds for objection asserted at the trial were that the testimony was not proper rebuttal (R. 651a). And the motion to strike made after the judges had testified was based entirely on the ground that “it was testimony in possession, clearly in possession of the government which could have and should have been introduced in chief, and was in rebuttal of not one single thing the defendant put forth, whatsoever” (R. 661a). Petitioner never suggested his present understanding of the evidence in chief as having established “for all purposes” the fact that the record-

ing had been authorized. See Pet. Br. 47; note 14, *supra*. In these circumstances, it was proper for the district court to overrule petitioner's objections. The very broad discretion assigned to district judges to permit evidence in rebuttal which might have been presented during the case in chief is well established. See, e.g., *Goldsby v. United States*, 160 U.S. 70.

2. *Vick's affidavit*.—The affidavit was admissible in rebuttal on similar grounds. In deciding whether Vick or petitioner was telling the truth as to when their conversations regarding juror Elliott began, it was relevant for the jury to have before it Vick's affidavit of November 8.<sup>15</sup> Similarly, in evaluating the government's conduct and determining whether there was substance to the claim that Sheridan had devised an intricate trap for petitioner, it was relevant for

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<sup>15</sup> Petitioner errs in assuming that Vick's affidavit was nothing more than an inadmissible prior consistent statement. First, it was a statement made contemporaneously with the events and it therefore had substantially more probative value—particularly when specific dates became an issue, as they did at trial—than a statement made substantially after the event. Second, it was a *sworn* statement, and that gave it an added measure of reliability. Finally, and most significantly, it was a statement made before Vick could possibly know what petitioner would say to him in subsequent recorded conversations. The fact that the content of the affidavit was corroborated by petitioner's *later* conversations with Vick gives it substantially greater credibility than a bare statement made after all opportunity for tests of reliability are gone. In other words, in giving this statement and asserting therein that juror Elliott had first been discussed on November 7, Vick was assuming a risk that his later recorded conversations with petitioner might show that they had discussed it before that date. The fact that the conversations were consistent with the earlier affidavit gives the affidavit credibility which an untested statement cannot have.



the jury to consider his testimony that he had flown to Nashville on hearing from Vick on November 7 (R. 167a) in light of the affidavit which Vick submitted on the following day. And in determining whether government counsel were acting properly in requesting Vick to see petitioner again with a recording device, it was appropriate for the jury to know the information on which the government believed this step to be necessary.

Government counsel agreed that a limiting instruction might be given to the jury with respect to Vick's affidavit (R. 662a). But petitioner's counsel, possibly preferring not to have the affidavit mentioned specifically at all, requested no such instruction and did not take up the government's suggestion (*ibid.*). Petitioner is hardly in a position now to object to the failure to give a limiting instruction.

Indeed, here as in the case of the judges' testimony, petitioner's only objection at trial was that the affidavit "could have been proven in chief" (R. 652a). The court observed, in response to that claim, that during the government's case in chief, petitioner had successfully objected to the introduction of Vick's affidavit (R. 662a; see R. 406a-408a). It was proper, therefore, for the Court to overrule the objection made at trial.

#### IV

**PETITIONER'S CONDUCT CONSTITUTED A VIOLATION OF  
18 U.S.C. 1503**

Petitioner's final contention is that since there was no chance that the approach to juror Elliott could



ever be successfully accomplished, his statements to Vick could not amount to an offense under 18 U.S.C. 1503 (Pet. Br. 50-56). The argument is unsound for three distinct reasons: (1) It is based on a misapprehension of Vick's status. (2) It misreads the "currently accepted principles" (Pet. Br. 50) of the law of criminal attempt. (3) It overlooks the broader reach of 18 U.S.C. 1503, the statute involved in this case.

A. SUCCESS OF PETITIONER'S ORIGINAL SUGGESTION TO VICK WAS NOT  
"FACTUALLY IMPOSSIBLE"

Petitioner argues that since Vick testified that he never had any intention of communicating with Elliott (R. 135a, 260a), petitioner's suggestion that Vick speak with Elliott and "get him on our side" (pp. 39-40, *supra*) could not amount to an offense. In making this argument, petitioner overlooks the fact that Vick was not a government employee on November 7; nor had he (his oral assurance to Sheridan notwithstanding) prevented himself from successfully executing the bribery of a juror. When petitioner suggested to Vick on November 7 that he approach his cousin, Vick's decision not to do so was based either on ethical and legal grounds or—if petitioner's characterization of Vick as a "loathsome specimen" (Pet. Br. 37) is accurate—on petitioner's failure to promise Vick enough to buy his cooperation. The scheme was not, we submit, doomed to failure from the moment petitioner opened his mouth; there was a real chance that, notwithstanding his conversations with Sheridan, Vick might play a role in this attempt as he had done

in the abortive approach to Mrs. Harrison. In his capacity as private citizen, Vick rejected the suggestion made by petitioner and called Sheridan in Washington. From that point on, it is true, petitioner's scheme could not have been carried out successfully. That did not, however, retroactively make the attempt an impossible one—any more than a federal official's decision not to take a bribe makes the initial bribe offer an attempt at the impossible. See, *e.g.*, *Lopez v. United States*, 373 U.S. 427. This factor, we submit, distinguishes this case from those in which government employees are used as “decoys” to collect evidence against persons who are planning illegal conduct.

**B. IF ESTABLISHED PRINCIPLES WERE APPLIED, “FACTUAL IMPOSSIBILITY” WOULD NOT BE A DEFENSE TO A CHARGE OF ATTEMPT BASED ON THIS EVIDENCE**

Even if, contrary to the argument we have just made, the evidence established that Vick was merely a “decoy,” and that petitioner's suggestion was doomed to failure from the outset, that would not, under currently accepted principles, entitle him to acquittal on the grounds of “impossibility.” Petitioner's assertion that “impossibility precludes conviction for criminal attempt, whether such impossibility be legal or factual” (Pet. Br. 51) is simply a misstatement of the current weight of authority. Cases cited by petitioner in support of the proposition have either been disapproved by subsequent decisions and commentators or have involved peculiar circumstances excepting them from the usual rule that impossibility is *not* a defense.

The general rule that impossibility is *not* a defense to a charge of criminal attempt has been recognized by American and English commentators. See, e.g., Perkins, *Criminal Law* (1957), pp. 489-490; Williams, *Criminal Law: The General Part* (2d ed. 1961), p. 635 ("Provided that other rules are satisfied, the law now is that an act will amount to an attempt although the commission of the meditated crime is impossible by the means chosen."). A partial listing of cases so holding, which constitute the overwhelming weight of authority, appears in the margin.<sup>16</sup>

<sup>16</sup> *State v. Mandel*, 78 Ariz. 226, 278 P. 2d 413 (1954); *People v. Arberry*, 13 Cal. App. 749, 114 Pac. 411 (1910); *People v. Camodeca*, 52 Cal. 2d 142, 388 P. 2d 903 (1959); *People v. Fiegelman*, 33 Cal. App. 2d 100, 91 P. 2d 156 (1939); *People v. Fratianno*, 132 Cal. App. 2d 610, 282 P. 2d 1002 (1955); *People v. Lanzit*, 70 Cal. App. 498, 233 Pac. 816 (1925); *People v. Lee Kong*, 95 Cal. 666, 30 Pac. 800 (1892); *People v. Siu*, 126 Cal. App. 2d 41, 271 P. 2d 575 (1954); *People v. Dogoda*, 9 Ill. 2d 198, 137 N.E. 2d 386 (1956); *People v. Huff*, 339 Ill. 328, 171 N.E. 261 (1930); *People v. Lyons*, 4 Ill. 2d 396, 122 N.E. 2d 809 (1954); *State v. McCarthy*, 115 Kan. 583, 224 Pac. 44 (1924); *Commonwealth v. Kennedy*, 170 Mass. 18 48 N.E. 770 (1897); *Commonwealth v. McDonald*, 59 Mass. 365, 5 Cush. 365 (1850); *People v. Jones*, 46 Mich. 441, 9 N.W. 486 (1881); *State v. Mitchell*, 170 Mo. 633, 71 S.W. 175 (1902); *State v. Scarlett*, 291 S.W. 2d 138 (Mo. 1956); *State v. Meisch*, 86 N.J. Super. 279, 206 A. 2d 763 (1965); *People v. Bennett*, 182 App. Div. 871, 170 N.Y. Supp. 718 (2d Dep't), affirmed, 224 N.Y. 594, 120 N.E. 871 (1918); *People v. Boord*, 260 App. Div. 681, 23 N.Y.S. 2d 792 (1st Dep't, 1940), affirmed, 285 N.Y. 806 (1941); *People v. Gardner*, 144 N.Y. 119, 38 N.E. 1003 (1894); *People v. Mills*, 178 N.Y. 274, 70 N.E. 786 (1904); *People v. Moran*, 123 N.Y. 254, 25 N.E. 412 (1890); *State v. Utley*, 82 N.C. 556 (1880); *Commonwealth v. Crow*, 303 Pa. 91, 154 Atl. 283 (1931); *Clark v. State*, 86 Tenn. 511, 8 S.W. 145 (1888); *State v. Damms*, 9 Wisc. 2d 183, 100 N.W. 2d 592 (1960); *United States v. Domingues*, 7 U.S.M.C.A. 485, 22 C.M.R. 275 (1957); *United States v. Thomas*, 13 U.S.C.M.A. 278, 32 C.M.R. 278 (1962).

The principal common thread of the cases cited by petitioner is that most of them deal with situations in which the defendant would not have been committing a substantive offense if his plan had been carried into fruition. In *People v. Jaffe*, 185 N.Y. 497, 78 N.E. 169, for example, the defendant attempted to purchase goods which he believed to have been stolen but which had, in fact, been restored to their owners before they were offered to the defendant. The court reversed the defendant's conviction, noting that the "crucial distinction" between that case and prior "impossibility" cases was "that in the present case the act, which it was doubtless the intent of the defendant to commit, would not have been a crime if it had been consummated." 185 N.Y. at 500. The same may be said of the other cases which petitioner cites as instances of "legal impossibility" (Pet. Br. 51-52)<sup>17</sup> and of the cases involving attempts to bribe individuals who are not jurors in fact.<sup>18</sup> In each of these instances, the crime was entirely in the defendant's mind. Had he and those acting for him accomplished the acts they intended to accomplish, he would have committed no substantive offense. There is, therefore, some basis for hesitating before convicting him of an attempt.<sup>19</sup>

<sup>17</sup> *Booth v. State*, 398 P. 2d 863 (Okla. Cr.); *Wilson v. State*, 85 Miss. 687, 38 So. 46; *Marley v. State*, 58 N.J.L. 207, 33 Atl. 208; *People v. Teal*, 196 N.Y. 372, 89 N.E. 1086.

<sup>18</sup> *State v. Porter*, 125 Mont. 503, 242 P. 2d 984; *State v. Taylor*, 345 Mo. 325, 133 S.W. 2d 366.

<sup>19</sup> Notwithstanding this rationale, the *Jaffe* case and others like it have been subject to severe criticism. See, e.g., Sayre, *Criminal Attempts*, 41 Harv. L. Rev. 821, 853-854 (1928);



The distinguishing features of the present case may be demonstrated by contrasting the facts in *Jaffe* with those in *People v. Gardner*, 144 N.Y. 119, 38 N.E. 1003, which the New York Court of Appeals discussed and distinguished in its *Jaffe* opinion. In *Gardner* the defendant was convicted of attempted extortion for having sought to extort money from the keeper of a house of prostitution who had, more than a month before the defendant approached her, agreed to act as a decoy for the police. The defendant's contention that it was, from the outset, impossible for him to inspire fear in his contemplated victim since she was acting on behalf of the police was squarely rejected by the court. The court observed that the state of the victim's mind "was unknown to the defendant. If it had been such as he supposed, the crime could have been and probably would have been consummated. His guilt was just as great as if he had actually succeeded in his purpose." 144 N.Y. at 124. The court then quoted from an earlier decision (*People v. Moran*, 123 N.Y. 254, 25 N.E. 412), in which it had held that "the question whether an attempt to commit a crime has been made, is determinable solely by the condition of the actor's mind and his conduct in the attempted consummation of his design." 144 N.Y. at 124-125. In distinguishing *Gardner*, the court in *Jaffe* observed that this general rule is inapplicable "where, if the accused had completed the act which he attempted to do, he would not be guilty of a criminal offense." 185 N.Y. at 502.

Arnold, *Criminal Attempts—The Rise and Fall of an Abstraction*, 40 Yale L.J. 53, 77-78 (1930); Hall, *General Principles of Criminal Law* (1947), pp. 594-595.



The present case is obviously similar to *Gardner* and quite unlike *Jaffe*. The obstacle which made realization of petitioner's unlawful scheme "impossible" was the state of Vick's mind—the fact that he had agreed to inform the police, just as the keeper of the house of prostitution had done in *Gardner*. Elliott was, in fact, a juror, and if Vick had been otherwise disposed, petitioner's plan could have achieved its unlawful objective.

No case has been cited by petitioner, and none is known to us, in which a defense of impossibility was sustained on the ground that the person with whom an accused was involved in an illegal scheme, and through whom he hoped to achieve his purpose, was reporting to the government. Several decisions have held to the contrary.<sup>20</sup> Similarly, the fact that threats, false pretenses or bribe offers were addressed to undercover agents or decoys has never been held to warrant a defense of impossibility.<sup>21</sup> These decisions, we believe, together with the general rule—supported by overwhelming authority—that impossibility is not a defense to a charge of attempt, announce the "currently accepted principles of criminal law" (Pet. Br. 50) and govern this case.<sup>22</sup>

<sup>20</sup> *State v. Mandel*, 78 Ariz. 226, 278 P. 2d 413 (1954); *People v. Lanzit*, 70 Cal. App. 498, 233 Pac. 816 (1925); *People v. Mills*, 178 N.Y. 274, 70 N.E. 786 (1904).

<sup>21</sup> *People v. Heinrich*, 65 Cal. App. 510, 224 Pac. 466 (1924); *People v. Gardner*, *supra*; *People v. Boord*, 260 App. Div. 681, 23 N.Y.S. 2d 792 (1940), affirmed, 285 N.Y. 806 (1941).

<sup>22</sup> Of the other cases cited by petitioner (Pet. Br. 52), *Regina v. Gamble*, 10 Cox C.C. 545 (1867) is cited by Perkins, *Criminal Law* (1957), p. 491, as an illustration of the principle that

Petitioner concedes that the "impossibility" defense he urges is inconsistent with the view of the Model Penal Code, but argues that the Code is seeking to change existing law (Pet. Br. 55-56). The discussion and citation of extensive authorities in Wechsler, Jones and Korn, *The Treatment of Inchoate Crimes in the Model Penal Code of the American Law Institute: Attempt, Solicitation and Conspiracy*, 61 Col. L. Rev. 571, 578-585 (1961), refutes the assertion. The objective of this provision of the Model Penal Code is, to be sure, "to eliminate legal impossibility as a defense to an attempt charge" (*id.* at 578), but that expressed purpose does not mean that the defense of impossibility has been generally approved—or that it has ever been applied in circumstances such as these. Indeed, the authors of the cited article, after discussing a handful of decisions, observe (*id.* at 579), "Apart from the decisions previously mentioned—sometimes referred to as instances of 'legal impossibility,'—the claim of impossibility has proven to be a poor shield against criminal attempt charges." We submit that there is no reason for this Court to adopt the minority view, rejected by the leading contemporary experts in the area of the criminal law, in construing 18 U.S.C. 1503, a statute which was broadly designed to protect the integrity of the federal judicial system.

"[i]f attempting to discharge a *loaded* gun at another is made a felony by statute, this offense is not established by proof of an effort to shoot a person with a gun that was not loaded." *State v. Clarissa*, 11 Ala. 57, is contrary to *Commonwealth v. Kennedy*, 170 Mass. 18, 48 N.E. 770, and *State v. Glover*, 27 S.C. 602, 4 S.E. 564.

C. THE STATUTE INVOLVED IN THIS CASE REACHES WELL BEYOND THE  
LAW OF ATTEMPT

Finally, the most conclusive answer to petitioner's "impossibility" argument is that even if the facts of this case would warrant an acquittal of *attempt* charges on "impossibility" grounds, that defense is not available in light of the language and purpose of 18 U.S.C. 1503, the statute which petitioner was charged with having violated. Section 1503 makes it a felony not merely corruptly to influence or attempt to influence the administration of justice; it prohibits any "endeavor" (p. 2, *supra*).

In *United States v. Russell*, 255 U.S. 138, an indictment charged that the accused had gone to the home of a man on the jury panel and talked with his wife, asking her to question her husband on his attitude toward the defendants in an approaching criminal trial. He asked the juror's wife to report to him the result of such questioning, as the defendants did not want to pay money to the jurors unless it was known that they favored acquittal. A demurrer to the indictment was sustained, following which the government brought the case to this Court on a writ of error. In answer to the accused's argument that the allegations of the indictment "only amounted to a solicitation of a third person who did not accept or act in furtherance of such solicitation," the Court said (255 U.S. at 143, emphasis added):

The word of the section is "endeavor," and by using it the section got rid of the technicalities which might be urged as besetting the word "attempt," and it describes any effort or essay

to accomplish the evil purpose that the section was enacted to prevent. Criminality does not get rid of its evil quality by the precautions it takes against consequences, personal or pecuniary. It is a somewhat novel excuse to urge that Russell's action was not criminal because he was cautious enough to consider its cost and be sure of its success. The section, however, is not directed at success in corrupting a juror but at the "endeavor" to do so. *Experimental approaches to the corruption of a juror are the "endeavor" of the section.* Guilt is incurred by the trial—success may aggravate, it is not a condition of it.

Among the "technicalities \* \* \* besetting the word 'attempt'" is the claim made here by petitioner—i.e., that the state of mind of the person to whom he spoke rendered his attempt ineffectual. Cases decided since *Russell* have consistently applied the word "endeavor" broadly to encompass, whether successful or not, any "of the variety of corrupt methods by which the proper administration of justice may be impeded or thwarted, a variety limited only by the imagination of the criminally inclined." *Catrino v. United States*, 176 F. 2d 884, 887 (C.A. 9). Squarely in point here is *United States v. Polakoff*, 121 F. 2d 333 (C.A. 2), in which the defendants approached an accused who had pleaded guilty and promised to obtain a reduced sentence for him in exchange for a certain payment. The accused was actually acting as an informer for the Narcotics Bureau; he negotiated with and paid the defendants upon the instructions of the Bureau. After one of the two defendants made false representations to an Assistant United



States Attorney, they were both arrested and charged with violating 18 U.S.C. 1503. The court of appeals observed that "it is clear that the attempted use of influence was doomed to failure from the beginning, since Kafton and the attorney and the government officials were working together and were fully apprised of all the facts which the defendants were concealing except where their purpose required disclosure." 121 F. 2d at 334. Nonetheless, noting that under the statute "the corrupt endeavor alone is twice forbidden" (*id.* at 335), the court affirmed the convictions. See also *United States v. Mannarino*, 149 F. Supp. 351, 352 (W.D. Pa.) ("\* \* \* it matters not that the endeavor was absolutely ineffective.")

In *Caldwell v. United States*, 218 F. 2d 370, 371 (C.A. D.C.), certiorari denied, 349 U.S. 930, the defendant was convicted of obstruction of justice on proof that he offered money to an intermediary "to talk with the jurors, feel them out and see how they felt towards the particular case." There was no testimony as to the defendant's motive or proof that the intermediary had accepted any money or approached any juror. And in *Knight v. United States*, 310 F. 2d 305, 307 (C.A. 5), the act of the defendant in offering money to a third person to place some illegal whiskey in the bar of a potential witness who was on probation was held to constitute an endeavor to obstruct justice, even though the offeree declined to go through with the arrangement. The court pointed out that "success or failure of the endeavor was immaterial." See also *Anderson v. United States*, 215 F. 2d 84 (C.A. 6), certiorari denied *sub nom. Lewis v. United States*, 348



U.S. 888; *Hicks v. United States*, 173 F. 2d 570 (C.A. 4), certiorari denied, 337 U.S. 945.

The only case cited by petitioner and known to us in which 18 U.S.C. 1503 was held inapplicable to a corrupt course of conduct touching upon the administration of justice is *Ethridge v. United States*, 258 F. 2d 234 (C.A. 9). The defendant in that case offered to intercede with the judge on behalf of a convicted defendant in exchange for a \$1,000 payment. The victim did not believe the accused, and the court apparently concluded that there was no proof that the accused ever intended to do the things he promised to do. 258 F. 2d at 236. On these facts, the court of appeals correctly concluded that there was no attempt or endeavor to obstruct the administration of justice since the defendant had, in fact, no purpose of engaging in that particular substantive offense. His intent, which is, of course, relevant in determining whether he has committed an endeavor or an attempt, was not at all directed to obstruction of justice;<sup>23</sup> as the court observed, his "only 'endeavor' \* \* \* was the unilateral and futile effort \* \* \* to extract some 'easy money' from Walters." 258 F. 2d at 236.<sup>24</sup> The

<sup>23</sup> As we noted previously, the majority rule regarding attempts is that the guilt of the defendant "is determinable solely by the condition of the actor's mind and his conduct in the attempted consummation of his design." *People v. Moran*, 123 N.Y. 254, 25 N.E. 412 (p. 63, *supra*).

<sup>24</sup> Petitioner analogizes this case to *Ethridge* because "Vick never had the slightest intention \* \* \* of ever talking to or getting in touch with Elliott" (Pet. Br. 53). Obviously, the critical question is not Vick's intention but petitioner's, and it is entirely clear that petitioner—unlike the defendant in *Ethridge*—had every intention of corruptly obstructing justice.

*Ethridge* case does not apply, we submit, where the intent of the defendant is as it was here—corruptly to obstruct justice by offering a bribe to a juror.<sup>25</sup>

The principle that the word “endeavor” should be broadly construed is clearly supported by sound reasons of policy. Obstructions of justice such as bribery of jurors or witnesses are, if successful, extremely difficult to detect. Unlike crimes of violence or those in which individuals are directly defrauded, there is unlikely to be a complaining party if the scheme succeeds. The briber, his intermediaries and the person bribed are likely to be satisfied with the results of their efforts, and the party who has improperly lost his lawsuit will be unable ever to learn why. Consequently, if the offense is to be deterred, it is essential that it be punishable even if caught at its very earliest stages. It is precisely when one engaged in such an endeavor confides in, and seeks the assistance of, another who is not prepared to join the illegality that such schemes may be discovered. If the originator of the scheme were then permitted to defend on the ground of impossibility, the most realistic deterrent would be lost.

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<sup>25</sup> The fact that the juror here was only a prospective juror and not one who was already sitting does not withdraw this case from the scope of 18 U.S.C. 1503. The statute protects prospective jurors as well as those in the jury box. *Calvaresi v. United States*, 216 F. 2d 891, 898 (C.A. 10), reversed on other grounds, 348 U.S. 961; see *United States v. Russell*, 255 U.S. 138, 143; cf. *Ward v. United States*, 296 F. 2d 898 (C.A. 5); *Roberts v. United States*, 239 F. 2d 467, 470 (C.A. 9) (prospective witness); *United States v. Mannarino*, 149 F. Supp. 351 (W.D. Pa.) (prospective witness).

## CONCLUSION

For the foregoing reasons we submit that the judgment below should be affirmed.

Respectfully submitted.

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SEPTEMBER 1966.

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IN THE  
**Supreme Court of the United States**

October Term, 1966.

No. 29.

Z. T. OSBORN, JR.,

*Petitioner,*

v.

UNITED STATES OF AMERICA.

On Writ of Certiorari to the United States Court of Appeals  
for the Sixth Circuit.

**PETITIONER'S REPLY BRIEF.**

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**PETITIONER'S REPLY BRIEF.**

The prosecution's brief reflects only selective portions of the record and in consequence fails to present an accurate account of the facts in this case. The present reply is accordingly required as an indispensable corrective. It will not reargue matters already presented on behalf of petitioner in the brief in chief.

**I. VICK WAS NO PRIVATE CITIZEN BUT, TO THE CONTRARY, WAS AN AGENT OF THE UNITED STATES IN LAW AND IN FACT.**

Although the prosecution says nothing about Vick's offers to change his testimony in return for a cool quarter of a million dollars, see full references at Pet. Br. 14-15, nor concerning his unsavory past (Pet. Br. 16), this individual upon whose testimony the present conviction in large measure rests is now recognized as sufficiently malodorous that the prosecution seeks to disavow him—at least partially—by calling him “a private citizen” (Pros. Br. 46) and by denying that he was ever a government agent (Pros. Br. 19 n. 4, 46 n. 9, 48 n. 10).

The record refutes this belated effort by the prosecution to repudiate its shabby collaborator.

Vick was no private citizen. He testified (R. 128a) that “I am a policeman,” and at the time of trial, though still employed by the Nashville Police Department, he admitted that “I am on special assignment to the Federal Government” (R. 192a). See also, *accord*, R. 128a-129a, 231a-232a. Vick had also been a divorce investigator, i.e., he “would go out and get evidence against a man or woman to be used in a divorce case” (R. 218a). At the time of the events charged in the indictment, so he said from the witness stand, “I was an undercover agent, so to speak, and was trying to get information” (R. 248a).

Of course agency cannot be proved by the agent, nor do we contend for a moment either that Vick was on the Federal payroll, or that he took the statutory oath required by R. S. § 1757 (5 U. S. C. § 16), or that he had either the benefits of or was subject to the re-



strictions contained in the voluminous and extensive provisions of Title 5 of the United States Code. What we do say is that he worked for the United States, subject to the directions of the representative of the Department of Justice in charge of the investigation, and that in consequence he acted for the United States in fact and was an agent of the United States as a matter of law.

Vick reported to the F. B. I. as early as February 1963 (R. 253a). In June he told the F. B. I. that he wished to supply information. His offer was at that time declined (R. 251a, 257a). Vick finally admitted he assumed the "role" in July 1963 (R. 228a).

Later, in August or September, Vick had a number of talks with Walter J. Sheridan (R. 167a), the man who directed the investigation as a representative of the Department of Justice (R. 188a). Vick had these talks when he feared loss of his job (R. 224a). Both Vick and Sheridan, prosecution witnesses at the trial, agreed that Vick was requested to report only information concerning illegal activities (R. 225a-226a, 273a); in Sheridan's words, "I asked him [Vick] in the course of his activities he became aware of any information concerning illegal activities that *I would like him to represent me* (R. 166a; italics added).

As early as June 1963, Vick had told the FBI that he "desired an arrangement with the Government wherein he would be protected from prosecution for furnishing information" (R. 258a). He later told Sheridan that he wanted a clean bill of health (R. 221a-225a). Inasmuch as Vick has never been prosecuted for his connection with the charge of which petitioner stands convicted, and was still on the local police pay-

roll at the time of the trial without doing any work whatever (R. 231a-232a), it follows that the Government kept its promise, and that Vick's testimony that he was not promised or paid anything for the information furnished (R. 214a, 230a) is shown on its face to be false. (Interestingly enough, while the prosecution relies on Vick's testimony to that effect at Pros. Br. 18, on the next page, Pros. Br. 19, it admits the fact of Vick's offer in June to supply information in exchange for protection from prosecution.)

The record shows that, after his first contacts with the F. B. I. and with Sheridan, Vick begged petitioner for employment, pretending to fear loss of his job, and speaking of his need for money. See references at Pet. Br. 6. Finally, on October 28, petitioner reemployed Vick for background investigation of jurors (R. 197a-198a), a fact Vick quickly telephoned to Sheridan on the same day (R. 653a). Certainly the fact of employment was not an "illegal activity."

At the hearing on the motion to suppress, and also at the trial, Vick denied ever having mentioned the juror Elliott to anyone before mentioning his name to petitioner (R. 130a-343a). But later at the trial, when confronted with Sheridan's report, Vick admitted that he had mentioned Elliott to Sheridan on October 21 (R. 348a-349a), a week before he was reemployed by petitioner.

After such reemployment, and after Vick had mentioned Elliott's name to petitioner and had reported the conversation to Sheridan, the latter "said that would I just play it by ear, so to speak, and continue discussions with Mr. Osborn and report it to him" (R. 137a). When Vick thereafter entered Osborn's office wired for sound, with a recorder strapped to his person, it was Sheridan who sent him (R. 190a).

It follows that, on familiar and long settled principles, Vick acted as an agent of the United States even though he was not formally an employee of the United States. In strictness, Vick was Sheridan's agent and thus a subagent of the United States. We set forth below the pertinent paragraph of the *Restatement, Second, on Agency*:

"§ 1(1) Agency is the fiduciary relation which results from the manifestation of consent by one person to another that the other shall act on his behalf and subject to his control, and consent by the other so to act.

"(2) The one for whom action is to be taken is the principal.

"(3) The one who is to act is the agent.

\* \* \*

"§ 3(1) A general agent is an agent authorized to conduct a series of transactions involving a continuity of service.

\* \* \*

"§ 5(1) A subagent is a person appointed by an agent empowered to do so, to perform functions undertaken by the agent for the principal, but for whose conduct the agent agrees with the principal to be primarily responsible.

\* \* \*

"§ 15 An agency relation exists only if there has been a manifestation by the principal to the agent that the agent may act on his account, and consent by the agent so to act.

\* \* \*

"§ 26 \* \* \* authority to do an act can be created by written or spoken words or other conduct of the principal which, reasonably interpreted, causes the agent to believe that the principal desires him to act on the principal's account."

It is not necessary to labor the point. Vick was Sheridan's agent and hence the subagent of the United States—which has used the results of his activity and has never disavowed or repudiated him, and still does not do so, however much its brief indicates that it would somehow prefer him to have had a different status.

Even the trial judge was moved to say "Well, Mr. Vick was a rather confusing witness, to say the very least of it. To say now just what he did testify would be a rather difficult thing to do."

The cynicism of Vick towards law in general is revealed when he in talking about the trial judge to his friends he said "Now whenever you have jury tampering, wherein Tommy's case. That s.o.b. can sit up on that bench and do anything, and get away with it . . ." "That's right . . . damn judge will sit up and he'll do just about anything and get away with it. And the Supreme Court won't reverse it" (R. 325a-327a).

The prosecution's present efforts, to insist on the one hand that what Vick obtained was competent evidence, and to insist on the other that he was only "a private citizen" (Pros. Br. 46) and that he was in no sense a government agent (Pros. Br. 19 n. 4, 46 n. 9, 48 n. 10), founders on the record and fails as a matter of law. But at least the latter aspect of the matter comes close to, if indeed it does not involve, an admission that with Vick actually acting on behalf of the United States, as indubitably he did, petitioner's case becomes

infinitely stronger and that of the prosecution perceptibly weaker.

The foregoing argument is independent of, and does not rest in any degree on, the testimony of Samuel Eugene Wallace, Esq., a Nashville lawyer.

Wallace testified, among other matters, to meeting with Vick about a week or ten days *after* petitioner had been disbarred (R. 582a), an event shown elsewhere in the record to have taken place on November 21, 1963 (R. 58a-77a).

At that meeting, Vick told Mr. Wallace that he had gone on the Federal payroll in May. "And he told me that night sitting up there at a table that his assignment was to get Tommy [Osborn, the petitioner] and to get me. \* \* \* He said, 'I got Tommy but I found out that you didn't have anything to do with it. \* \* \*'" (R. 582a). This was the same Wallace that Vick admitted he went to see in September 1963 with the jury list (R. 269a-271a).

## **II. THE JUDGES' AUTHORIZATION OF THE RECORDINGS WAS HIGHLY IMPROPER.**

We argued (Point II, Pet. Br. 20-21, 31-36) that, quite apart from the admissibility<sup>1</sup> of the concealed re-

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1. Where entrapment is an issue it is manifestly wrong to record and then play at the trial the *last* conversation after a series of conversations. In *Mapp v. Ohio*, 367 United States 643, 662, Justice Black concurring stated:

"... that when the Fourth Amendment's ban against unreasonable searches and seizures is considered together with the Fifth Amendment's ban against compelled self-incrimination, a constitutional basis emerges which not only justifies but actually requires the exclusionary rule."

In *Boyd v. United States*, 116 U. S. 616, 633, this Court fully discussed this relationship and declared itself "unable to perceive that the seizure of a man's private books and papers to be used in evidence



ording, in respect of which we asked the Court to reconsider or at least to limit the Olmstead-On Lee-Lopez line of cases; contending that the recording was unlawfully obtained because it was the fruit of improper judicial collaboration with law enforcement officers prior to trial, and hence should have been excluded quite apart from constitutional considerations.

To this the prosecution makes two replies.

First, it says that the judges were obliged to follow up the information they receive in order to protect the integrity of the administration of justice and to discipline counsel, citing generalized authorities to that effect, including one where a different result was reached on rehearing (Pros. Br. 38-39; *In re Isserman*, 345 U. S. 286, cited at p. 38, was reversed on rehearing, 348 U. S. 1).

Next, it says that the procedure followed "was analogous to the procedures followed in obtaining a search warrant," so that "petitioner mistakes a virtue for a vice" (Pros. Br. 36).

Both propositions are demonstrably specious; we shall deal with them in order.

*One.* We do not quarrel in any degree with the principle that courts must protect themselves against improper practices or that, if improper conduct on the part of officers of the court is discovered either with or without extended investigation, disciplinary measures are in order. But petitioner's disbarment is not in issue here; as the prosecution admits, that proceeding is now pending in the Court of Appeals (Pros. Br. 38); and

against him is substantially different from compelling him to be a witness against himself. In *Wong Sun v. United States*, 371 U. S. 471, 484-86, this Court ruled that a verbal statement is an "effect" protected by the Amendment.

while we are concerned over the circumstance that the order to show cause why petitioner should not be disbarred had been prepared *in advance* of his first confrontation with the judges (R. 363a-366a; Govt. Ex. 13, R. 370a-381a)—as indeed the prosecution's studied omission of that circumstance (Pros. Br. 13) reflects concern on its part also—all of the disbarment issues are purely collateral here.

Here only petitioner's criminal conviction is in question. And here the vice of the proceeding lies in the fact that, while the agents of the United States had petitioner under investigation, they first submitted the fruits of their investigation to both United States judges in the district. Next, without either statutory authority or decisional precedent, they undertook to obtain advance approval for their next investigative step, which was to send Vick back to Osborn carrying a concealed recorder. Finally, after the recorder had worked on the third try, the recording was played back to the judges.

Thus the judges, instead of holding the scales even between prosecution and defense, allied themselves with the Department of Justice and the F. B. I. while the investigative process was still underway, and turned themselves into policemen.

Judges simply have no business to participate in searching for evidence of crime. Because, once they do, they align themselves with one of the parties, and thus they destroy the independence of the judiciary—to say nothing of degrading the judicial process. When judges become policemen, when the judiciary joins in partnership with the prosecution, then equal justice under law is at an end.

*Two.* We have already set forth (Pet. Br. 31-33) some reasons why what was done could not be equated with the search warrant procedure that the court below invoked in a footnote (R. 56 n. 1).

We pointed out that in the case of a search warrant the officer serving that instrument announces his status and produces the warrant; here, however, Vick concealed the fact that he was acting on behalf of the United States, and of course he did not produce any warrant: There was none. Similarly there was no written evidence of the judges' authorization, since of course to have produced evidence of it would most effectually have frustrated the very purpose of Vick's visit.

We also pointed out that, when an actual search warrant is executed, the fruits of the search are never brought to the magistrate until they are produced in the course of a trial.

We should further have mentioned, no doubt omitting to do so because of its obviousness, that there has never been any statutory sanction for search warrants in connection with the carrying of concealed recorders, nor any decisional precedent for such a step.

Indeed, the whole discussion of search warrants that has been injected into this case is unreal and literally fictitious, however much it may reflect zeal to uphold a prosecution that rests on evidence obtained through the collaboration of the Department of Justice with the Federal judiciary.

In this Court, the prosecution takes inconsistent positions, no doubt hoping that, as in a true-false test, one of its answers must be right.

On the one hand, the prosecution invokes the search warrant analogy, asserts that "petitioner mistakes a

virtue for a vice," and that "the judges' participation here \* \* \* is to be favored rather than disapproved" (Pros. Br. 36-37). On the other, the prosecution argues against the view of the *amicus curiae* in this case that "the equivalent of a warrant is constitutionally required before the government may employ the services of an informant," because "it finds no precedent in the history of [the Fourth Amendment's] administration" and because "Its wisdom is \* \* \* properly a matter for legislative consideration, not for judicial decision" (Pros. Br. 32 n. 5).

The simple answer is that the prosecution's objections to the search warrant analogy invoked by the *amicus curiae* in respect of informants are equally applicable in every respect to the search warrant analogy invoked by the prosecution in respect of the concealed tape recorder. Both are equally fictitious.

We submit that, for the reasons already set forth, the search warrant analogy is specious in the extreme, and, particularly in the circumstances of this case, wholly extraneous.

Under the doctrine of *On Lee v. United States*, 343 U. S. 747, and, preeminently, under the rule of *Lopez v. United States*, 373 U. S. 427, the latter case decided in May 1963, the use of a hidden recorder on the person of a government undercover agent in November 1963 was perfectly lawful. Such use had the formal imprimatur of this Court, nor did it require the "me too" of any district judge as an additional cachet of respectability. If Messrs. Sheridan *et al.* had simply affixed the recorder to Vick on their own, any recordings so obtained would have been admissible as long as *On Lee* and *Lopez* stood—and of course both decisions

still stand until and unless this Court in the present case overrules or limits them.

Consequently, on the law as it stood—and still stands on this day, no matter how strongly we happen to disagree with it (Pet. Br. 27-30)—it was not necessary for Sheridan and his subordinates to seek judicial approval as a prerequisite to the lawfulness of their scheme to send Vick to petitioner wired for sound.

When Sheridan and his men took the matter to the judges for a further authorization that the law did not require and for which there was no precedent, they accomplished only the improper end of seeking judicial allies in their hunt for evidence of wrongdoing. And when the judges then became the associates and the collaborators of the Department of Justice and of the Federal Bureau of Investigation, when the judges themselves became active participants in the business of apprehending suspected offenders, their action forever tainted the evidence obtained by Vick on his concealed recorder, quite apart from constitutional considerations.

This Court in the exercise of its supervisory capacity should rule, unequivocally and in terms not susceptible to future misunderstanding, that evidence obtained by law enforcement officers of the United States at the direction and with the collaboration of United States judges, is utterly inadmissible for any purpose. Evidence so obtained impairs the impartiality of the judiciary, necessarily saps their independence, and cannot be squared with American concepts of the judicial function under a written constitution.



### III. THE RECORD ESTABLISHES ENTRAPMENT AS A MATTER OF LAW.

The prosecution's account of the sequence of events that preceded and led to the conversation between Vick and petitioner on November 11, 1963, the one was recorded on the instrument concealed on the former's person, is so incomplete and selective that in its totality it is demonstrably inaccurate.

Like the court below (R. 49-56; cf. R. 61), the prosecution fails to put that final conversation into context, in consequence of which its brief here never discloses how that last talk was simply "part of a course of conduct which was the product of the inducement" (*Sherman v. United States*, 356 U. S. 369, 374).

Actually, Vick had started reporting to the F. B. I. as early as February 1963 (R. 253a). On June 4, he told the F. B. I. that he planned to work for petitioner and offered to make available to the F. B. I. any information he might obtain (R. 257a). Thereafter, in August or September, he had several conversations, numbers and dates not specified, with Walter J. Sheridan (R. 167a), about working for the Government in order, as he termed it, to get a clean bill of health (R. 273a), at a time when he was greatly concerned with losing his job in the sheriff's office (R. 224a-225a).

Significantly, Vick made his arrangements with Sheridan, who testified that "I would like him [Vick] to represent me" (R. 166a), *before* he approached petitioner for reemployment (R. 225a).

In September the plot thickened. Before being employed by petitioner, Vick sought to tempt another Nashville lawyer, Samuel Eugene Wallace, Esq., by bringing the latter a copy of the jury list that Vick had

obtained on his own, telling Mr. Wallace that he had a cousin on the jury, and asking Mr. Wallace whether he thought a juror would be worth \$50,000 to Hoffa (R. 269a-271a, 576a-580a). Significantly, the prosecution *never once* mentions Vick's September approach to Mr. Wallace with the identical proposition that he subsequently made to petitioner in November.

Also in September, the F. B. I. laboratory in Washington sent to its Nashville office the tape recorder that Vick subsequently wore on his later visits to petitioner's office (R. 187a).

The record does not show the full content of the conversations between Vick and Sheridan in August and September of 1963 (R. 167a), but after petitioner had been disbarred, Vick once more sought out Mr. Wallace to tell the latter that Vick had been on the Federal payroll since May, and "that his assignment was to get Tommy [Osborn, the petitioner] and to get me. \* \* \* He said, 'I got Tommy but I found out that you didn't have any thing to do with it. \* \* \*'" (R. 582a).

At the hearing of petitioner's motion to suppress the tape recording Vick had obtained, Vick denied flatly that he had ever mentioned to anyone the fact that his cousin Elliott was on the jury until he had so advised petitioner (R. 130a). Vick made the same denial while testifying at the actual trial (R. 343a). But, a little later, when confronted with a Jencks Act document—a report made by Sheridan—Vick then *admitted* that, on October 21, 1963, he had told Sheridan that his cousin Elliott was on the jury list (R. 349a), obviously not an "illegal activity". The prosecution never admits that, in fact, Vick so advised Sheridan before his own reemployment by petitioner, a circumstance that puts the prosecution in the position of

underwriting Vick's palpable misstatements, untruths that Sheridan's own contemporary report exposes as such (R. 348a-349a).

It was not until a week after Vick's mention of Elliott to Sheridan that petitioner yielded to Vick's importunities and to his tales of financial straits and potential unemployment, and finally *reemployed* him. See extensive references at Pet. Br. 6. Vick repaid petitioner's kindness by immediately reporting his employment to Sheridan (R. 653a); this was an occupation for which he had hankered at least since early June, nearly five months earlier (R. 257a), and which he had told Mr. Wallace in September he would again get from petitioner (R. 577a).

Perhaps it should be specifically emphasized that the background investigation of jurors for which Vick had been hired was a perfectly proper activity. It was on precisely the facts to be found by Vick—race, religion, and education—that petitioner as counsel for Hoffa and later in his own capacity as defendant relied in challenging jury arrays as improperly selected. See *Hoffa v. Gray*, 323 F. 2d 178 (C. A. 6), certiorari denied, 375 U. S. 907; R. 9a-54a, R. 1b-11b, R. 441a *et seq.*

In this connection it is of the highest significance that although Vick testified positively that petitioner had hired him to investigate the jurors in Judge Miller's court (R. 197a, 200a), Vick on his own volunteered that he knew some members of the jury in Judge Gray's court, among whom was his cousin Elliott (R. 200a-201a). It was the latter list that in September Vick had unsuccessfully sought to peddle to Mr. Wallace. Cf. (R. 271a). Vick had also told Polk, an investigator for petitioner that "he knew three of the people on the jury panel" (R. 201a, 654a), *before* he mentioned

Elliott to petitioner. Yet the prosecution makes much of the fact that petitioner told Vick to assure Elliott that he would not be alone. But that was what Vick had told petitioner and Polk.

Just who originated the idea of having Vick tell Osborn of his cousin Elliott on the jury was never satisfactorily determined. After Vick had advised Sheridan that Elliott was on the jury, Sheridan "said that would I just play it by ear, so to speak, and continue discussions with Mr. Osborn and report it to him" (R. 137a, 138a). Sheridan knew that Vick would pretend to petitioner that he had talked to Elliott (R. 139a) when in actual fact Vick never had any intention of doing so (R. 140a). Vick's purpose in lying to petitioner "was to reveal the plan to the Department of Justice" (R. 140a).

Whose plan? Vick insisted he did not know how to answer "where did the idea of pretending that you were going to contact Elliott come from?" (R. 260a). What Vick did know, however, was that "I was trying to find out what Mr. Osborn's intentions were and prove it, and make a case" (R. 266a). Vick did know that he told petitioner he *had* seen the juror in order to find out what petitioner was going to do (R. 263a).

In *Sherman v. United States*, 356 U. S. 369, 375, 376, two previous convictions for narcotics were deemed insufficient to prove that petitioner had a readiness to sell narcotics. Surely an acquittal on Count 2 of the Beard matter stands on a higher ground and gives less reason to support an inference that petitioner was engaged in a line of criminal conduct to justify the tactics of the prosecution in this case, particularly when the prosecutor himself stated that when the Beard matter had come to his attention "There is nothing to that,



don't go into that" (R. 32b). It is also important to note that in the indictment that was returned on May 9, 1963, petitioner was not one of the defendants.

No doubt, Vick made his case—at least up to now. But it must be emphasized that the full picture of petitioner's entrapment does not appear from the final recorded conversation. That one was simply the last of a long series. As we have seen, Vick formed the intention of becoming an employee of petitioner as early as June (R. 257a), and he still had the same intention when he went to see Mr. Wallace in September (R. 577a). His original intention was "to get" both petitioner and Mr. Wallace (R. 582a), perhaps Polk (R. 201a), but when none rose to the bait, Vick concentrated on petitioner.

Vick was not a mere informer, he was a tempter. He discussed his plans with Sheridan, the man in charge (R. 188a), and Sheridan told him "that I would like him to represent me" (R. 166a). Later, when the trap was sprung, Sheridan told Vick "would I just play it by ear" (R. 137a).

Thus we have, not the situation of *On Lee*, where there was no entrapment, nor of *Lopez*, where the idea of bribery originated with the defendant. Indeed Lopez never claimed that the purpose of the investigations was to induce the bribe. We have instead a situation where (*Sherman v. United States*, 356 U. S. 369, 384 [concurring opinion]):

"The power of government is abused and directed to an end for which it was not constituted when employed to promote rather than detect crime and to bring about the downfall of those who, left to themselves, might well have obeyed the law. Human



nature is weak enough and sufficiently beset by temptations without government adding to them and generating crime."

Here Vick, whom Sheridan had told "that I would like him to represent me" (R. 166a), admitted "that his assignment was to get Tommy" (R. 582a). He did precisely what he was assigned to do. The prosecution admits that Vick "set the stage;" (Pros. Br. 44), but the evidence is clear that if the stage had not been "set" there would have been no performance. We submit that the result amounts to entrapment as a matter of law, with the result that the present conviction cannot be permitted to stand.

#### **IV. THE ADMISSION OF THE PROSECUTION'S REBUTTAL EVIDENCE CONSTITUTED PREJUDICIAL ERROR.**

The prosecution's brief does not include the incidents of the rebuttal testimony at the trial in its statement of facts; it omits that issue from its listing of questions presented, although still including it when opposing review (cf. Br. Op. 2 with Pros. Br. 2); and in the process of dealing with petitioner's contentions, it advances legal propositions that are obviously untenable on their face. Accordingly, we think it would be helpful, by way of preliminary, to restate the facts of record relating to the rebuttal issue.

*First.* After the defense rested, the prosecution offered by way of rebuttal the testimony of the two judges for the Middle District of Tennessee, such testimony to be confined "to the proposition of whether there was any entrapment" (R. 651a); the prosecutor said that he wanted "to show what information the

Government had at the time the tape recording was authorized" (R. 652a).

Then, although the judges' authorization for Vick to carry a recorder was already in evidence for all purposes (R. 383a-385a), the judges were permitted to testify that they authorized Vick to carry the recorder (R. 651a-660a).

Further, although Vick's affidavit, originally offered as part of the prosecution's case in chief after he had testified at length, had then been excluded (R. 406a-408a), his affidavit was admitted in rebuttal to show what was before the judges when they authorized the use of the recorder (R. 653a-655a).

Both judges testified over petitioner's objections (R. 651a, 652a, 655a-656a, 658a), and a later motion to strike their testimony was denied (R. 661a-663a). Vick's affidavit was similarly objected to (R. 653a, 655a), and although the prosecution was agreeable to a limiting instruction in respect of the affidavit (R. 662a), none was given. (We do not understand the prosecution's present argument (Pros. Br. 58) that "Petitioner is hardly in a position now to object to the failure to give a limiting instruction." Plainly, if petitioner had agreed to such an instruction he would have waived his unequivocal objection to the affidavit, both at the trial as well as on appeal. The point of the court's refusal to give the limiting instruction that the prosecution suggested is that simply emphasizes the error it committed.)

*Second.* None of the evidence given on rebuttal over the foregoing objections had the slightest bearing on the issue of entrapment, in respect of which it was ostensibly offered. The recording was already in evidence (Govt. Ex. 12, R. 212a, 741a-749a), the fact of

the judges' authorization was already in evidence for all purposes (R. 383a-385a), Vick had already testified at great length to all his conversations with petitioner (R. 191a-350a), and there had been not the slightest suggestion that any of his testimony involved recent contrivance.

The situation in respect of entrapment would not have been changed in the slightest degree if the recorder had been concealed on Vick's person simply on Sheridan's say-so without any involvement whatever on the part of the judges. And the challenge to the introduction of the recording Vick finally obtained was based on a pure question of law, and so was not for the jury in any event; whether or not the recording had been authorized, or the effect of the authorization, if any, were plainly questions only for the court.

*Third.* The prosecution now advances two arguments in support of the rebuttal evidence, both of which involve misapprehensions of the hearsay rule so thoroughgoing as to be, literally, weird.

1. In response to petitioner's documented assertion that the judges' authorization was already in evidence for all purposes (Pet. Br. 47, citing R. 383a-385a), the prosecution says (Pros. Br. 55 n. 14), "It is true that no limiting instruction was sought or given when the transcript of the hearing was read, but that did not, we submit, establish, under the hearsay rules, the fact of authorization."

This is, of course, purest nonsense. "A rule of Evidence not invoked is *waived*." 1 Wigmore, *Evidence* (3d ed. 1940) § 18, p. 321. Moreover, hearsay *vel non* is obviously never a jury question, and in the absence of objection hearsay fully admitted plainly has probative value. It is for this reason that, in appro-

priate cases, the erroneous admission of hearsay evidence constitutes reversible error, i.e., the jury gave it probative value by believing it when they should never have heard it.

2. In response to the many authorities cited to demonstrate the inadmissibility of Vick's affidavit (Pet. Br. 47, ¶ *Fourth*), the prosecution not only rejects out of hand the whole law regarding the inadmissibility of prior consistent statements—"it was a statement made contemporaneously with the events and it therefore had substantially more probative value—particularly when specific dates became an issue, as they did at trial—than a statement made substantially after the event" (Pros. Br. 57 n. 15)—it jettisons as well the basic rationale of the hearsay rule.

Here is what the prosecution now says in support of the Vick affidavit: "it was a *sworn* statement, and that gave it an added measure of reliability" (Pros. Br. 57 n. 15; italics in original).

That is simply more nonsense; affidavits are hearsay equally with unsworn statements, and both are equally inadmissible.

"\* \* \* it is clear that a mere affidavit—i.e. a statement made under oath before an officer—is inadmissible. \* \* \* This principle has been constantly recognized and enforced judicially." 5 Wigmore, *Evidence*, § 1384.

"The requirement of cross-examination, or an opportunity therefor, which is the essential feature of the Hearsay rule \* \* \* is clearly not satisfied when an affidavit is offered, because, though under oath, it is uttered 'ex parte,' without notice to the opponent to afford him the opportunity of cross-examination." 6 Wigmore, *Evidence*, § 1709.



We confess our surprise that anyone even cursorily conversant with the basic principles of the Anglo-American system of evidence in trials at common law should seriously advance the proposition just quoted from the prosecution's brief.

*Fourth.* In seeking to support the reception of the judges' testimony, the prosecution says (Pros. Br. 57):

"The very broad discretion assigned to district judges to permit evidence in rebuttal which might have been presented during the case in chief is well established. See, *e.g.*, *Goldsby v. United States*, 160 U. S. 70."

That passage does not meet our objection that what was testified to by the judges, offered on "the proposition \* \* \* of whether there was any entrapment or not" (R. 651a), was not rebuttal. In the *Goldsby* case the holding was that the challenged testimony *was* rebuttal; this Court said (160 U. S. at 74):

"The government called a witness in rebuttal, who was examined as to the presence of the defendant at a particular place, at a particular time, to rebut testimony which had been offered by the defendant to prove the alibi upon which he relied. This testimony was objected to on the ground that the proof was not proper rebuttal. The court ruled that it was, and allowed the witness to testify. It was obviously rebuttal testimony; however, if it should have been more properly introduced in the opening, it was purely within the sound judicial discretion of the trial court to allow it, which discretion, in the absence of gross abuse, is not reviewable here."



Plainly, that is not this case.

*Fifth.* Indeed, if it were, we are prepared to demonstrate that to permit these judges to testify, one in his own courtroom (R. 651a), the other stepping down from the bench to the witness chair (R. 658a), was indeed an abuse of discretion.

As we have said (Pet. Br. 49), the testimony "was opinion evidence by judges that in their opinion petitioner had been proved guilty." For the prosecution now to argue (Pros. Br. 56) that "There is no substance whatsoever to this contention" involves, as we can easily demonstrate, either sophistry or else utter lack of comprehension.

The judges testified that the charges against petitioner were so serious that they needed to be investigated (R. 657a, 659a-660a). They then authorized the recording and had it played back to them, after which they instituted disbarment proceedings (R. 371a-434a), in consequence of which petitioner was disbarred (R. 510a).

Or, in other words, "First we investigated and then disbarred"; the Q. E. D. in the equation is that in the judges' view petitioner was guilty. For, obviously, one does not disbar for good conduct.

Indeed, Judge Miller testified (R. 659a-660a), "So I therefore decided that the best course to take was to allow a tape recorder to be used which would either clear this man or would prove that he was guilty."

That is why we say that what the judges testified to on rebuttal was, inescapably, opinion evidence of petitioner's guilt—and evidence that had absolutely nothing whatever to do with the entrapment issue on which their testimony was adduced (R. 651a).

On Count One, as the jury's questions after retiring show (R. 730a-734a), the case was not open and shut. The determinative factor, plainly enough, was the final crushing weight of the judges' improper rebuttal testimony. Even if that issue stood alone, even if there were no other questions in the case, the error in permitting the judges to testify was so prejudicial that the present conviction cannot be allowed to stand. *Kotteakos v. United States*, 328 U. S. 750.

### CONCLUSION.

For the foregoing additional reasons, the judgment of conviction should be reversed.

Respectfully submitted,

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OCTOBER 1966.

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**IN THE  
SUPREME COURT OF THE UNITED STATES.**

**OCTOBER TERM, 1966.**

**No. 29.**

**Z. T. OSBORN, JR.,  
Petitioner,**

**v.**

**UNITED STATES OF AMERICA.**

**On Writ of Certiorari to the United States Court of Appeals  
for the Sixth Circuit.**

**PETITIONER'S PETITION FOR REHEARING.**

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On Writ of Certiorari to the United States Court of Appeals  
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**PETITIONER'S PETITION FOR REHEARING.**

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Petitioner, Z. T. Osborn, Jr., respectfully shows to the Court that he is much aggrieved by the opinion rendered by the Honorable Supreme Court in this cause on Decem-

ber 12, 1966, affirming petitioner's conviction of a violation of 18 U. S. C., § 1503 and petitioner contends that said opinion is erroneous in that it is based on material mistakes of fact and in that the Court has pretermitted material issues in this appeal which were raised by questions presented for review by this Court. In the interest of justice said opinion should be reconsidered, these mistakes of fact corrected, the pretermitted questions determined and the conviction reversed.

### **I. Mistake of Fact as to Vick's Employment.**

In referring to petitioner's recorded conversation of November 11, 1963, with government witness Vick, the Supreme Court mistakenly stated as a fact that "petitioner also knew he was talking to a law enforcement officer—a member of the Nashville Police Department" (Op. p. 4, n. 4). This statement of fact is incorrect because Vick was not a law enforcement officer and petitioner did not know or even believe that he was. See also the dissenting opinion of Mr. Chief Justice Warren in **Hoffa v. United States** (p. 5), where it is stated that Vick was a city police officer and petitioner "knew Vick's loyalty was due the police department." At the time of this conversation, Vick was not a policeman but had been a guard at the City Workhouse, which was operated by the Nashville Police Department (214a, 215a, 220a). Sometime in November, 1963, Vick was put on special assignment to the Federal Government (129a). However, this was not known to petitioner and there is no evidence that petitioner knew Vick was a law enforcement officer of any kind.

Because of its erroneous assumption of fact that, at the time of his recorded conversation with Vick, petitioner knew that Vick was a city law enforcement officer, this Honorable Court concluded that it did not matter that



petitioner did not know that Vick was a federal agent (Op. p. 2 and p. 4, n. 4). The Court made that assumption when it stated "Unless **Lopez v. United States** is to be disregarded, therefore, the petitioner cannot prevail" (Op. p. 4).<sup>1</sup>

The Court's assumption that Vick was a law enforcement officer apparently resulted from references to Vick as a member of the Nashville Police Department by counsel for both parties in oral argument and in their briefs (Govt. Br., pp. 3, 25, 26, Pet. Br., p. 5). Since the Government argued that Vick was merely doing his duty as a citizen (665a) and did not argue that Vick was a law enforcement officer for the city or that his employment status with the city made a material difference,<sup>2</sup> petitioner was not aware of the significance of Vick's employment status with the city until the Supreme Court's opinion was rendered.

Petitioner contends that, if the Court will reconsider this matter in the light of the corrected fact that Vick was not known by petitioner to be even a city law enforcement officer, there will be a material difference in the application of legal principles and a different result would ensue. The question would then involve the propriety of the use by an undercover federal agent of a concealed electronic recording device for the purpose of giving to other federal agents a recording of a conversation with a

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<sup>1</sup> Lopez dealt with a known government agent calling on him for the expressed purpose of investigating Lopez and enforcing federal law. Vick was not known to be a government agent. He gained access to petitioner by pretending that, because of prior employment by petitioner, federal agents would cause him to lose his job at the City Workhouse (214a, 215a, 220a, 221a, 224a, 225a, 457a, 458a). Petitioner believed Vick was his grateful employee (456a-458a).

<sup>2</sup> On page 46 of the Government's brief it is stated "Vick was acting in the capacity of a private citizen"

defendant who was not aware that the person to whom he was talking was a federal agent or law enforcement officer of any kind or that he had the device concealed on his person.

## **II. The Pretermitted Question as to the Directed Verdict of Guilty on Count One.**

Question 5 in the petition for certiorari, which was granted without limitation, was not answered in the Court's opinion and apparently was overlooked. Question 5 was "Whether it was prejudicial error for the trial court to instruct the jury that if they found the tape recording was legally obtained they should find there was no entrapment and return a verdict of guilty." The only mention in the opinion of the instructions on entrapment is in footnote 11 (Op. p. 9). There it is stated that the Supreme Court does not understand the trial judge's language as leaving to the jury the question as to whether the tape recording was obtained by lawful means.

As indicated by Question 5, the trial judge in effect directed the jury to return a verdict of guilty on Count One by his charge. His actual charge was "If, on the other hand, you find on the facts and circumstances of this case and on the instructions as here given you by the Court that the evidence aforesaid, including the tape recording, was obtained by lawful means, that is, that there was no unlawful entrapment, you will find this issue against the defendant and your verdict on Count One would be for the Government" (698a). In this charge the trial judge made the issue of entrapment turn on whether the recording of the conversation was lawfully obtained and shortly thereafter plainly indicated that it was by telling the jury that the recorder and conversation had the specific approval of the Federal Judges (701a). The judge had previously ruled that the evidence was obtained by lawful

means (153a) and had informed the jury of this ruling when he allowed this evidence to be admitted to the jury (212a). Thus, he instructed the jury (1) that, if the evidence was obtained by lawful means, their verdict on Count One must be for the Government; and (2) that the evidence was obtained by lawful means. The required conclusion from these two instructions is that the jury must find the petitioner guilty on Count One. The jury did find petitioner guilty on Count One as required by this charge.

If this charge were construed as leaving to the jury the question of whether the tape recording was obtained by lawful means, then that would have been the only question left to the jury on Count One and the charge still would have been erroneous. However, since this Honorable Court has held that the charge did not leave that question to the jury (Op. n. 11, p. 9), then it necessarily follows that the charge left no question to the jury as to Count One.

This charge constituted a directed verdict of guilty against the defendant, which cannot be justified on any basis in a criminal trial. It is prejudicial error to direct a verdict of guilty even if there are no undisputed facts.<sup>3</sup> See **Brotherhood of Carpenters v. United States**, 330 U. S. 395, 408, where it is stated: "For a judge may not direct a verdict of guilty no matter how conclusive the evidence." This charge was a denial of petitioner's constitutional right to a jury trial, and it is "plain error" that

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<sup>3</sup> There were numerous factual issues in this case which petitioner was entitled to have determined by the jury. These were whether all essential elements of the offense had been committed, including whether Elliott was in fact a prospective juror and whether petitioner had the necessary criminal intent, and, on the defense of entrapment, whether the offense was the result of Vick's creative activity and whether defendant was predisposed to commit the offense.

requires a reversal regardless of whether an objection was made to it. *Ibid.* 411, 412. "Failure to give a correct instruction where entrapment is in issue, is plain error." **Carson v. United States** (C. A. 9), 310 F. 2d 558, 561.

Even if the charge as to Count One did not constitute a directed verdict of guilty, it would still be "plain error" because it took from the jury the issue of petitioner's criminal intent, which was "a question of fact which must be submitted to the jury." **Morissette v. United States**, 342 U. S. 246, 274.

The constitutional provisions involved are Article III, § 2, cl. 3, "The trial of all crimes, except in cases of impeachment, shall be by jury," and the Sixth Amendment, "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury."

Although a specific objection to this charge was not necessary, Federal Rule of Criminal Procedure 52 (b), petitioner's counsel did take steps at the trial that amounted to making a specific objection. He submitted three correct requested instructions on entrapment which were refused (Numbers 42, 43 and 44, 728a-730a). After the jury retired, the trial judge took up the requests for instructions (709a). Petitioner's counsel insisted on all requests, whereupon the trial judge stated, that it is enough for counsel to say that the requests "represent the law of this case and are not otherwise covered in the general charge." The trial judge and the parties agreed on this "shortened" procedure (710a).

After having instructed the jury that "Unlawful entrapment means that the idea of committing the crime originated with the law enforcement officers, the Department of Justice, in this case, or its agent, Robert Vick, rather than with the defendant" (697a), the trial judge stated to the jury that in November of 1963, "Osborn

told Vick to go to Elliott, sit down with him and get him on our side" (700a). The trial judge stated this as a fact and not as a contention by the Government or as an opinion. This constituted a charge by the Court to the jury that, as a matter of law, petitioner told Vick to see Elliott and, therefore, the idea of committing the crime originated with petitioner and not with Vick. This took from the jury the determination of the defense of entrapment and was plain prejudicial error and violated petitioner's constitutional right to a jury trial. In a criminal case, "no fact, not even an undisputed fact, may be determined by the Judge." **Roe v. United States** (C. A. 5), 287 F. 2d 435, c. d. 368 U. S. 824. See **Hardy v. United States** (C. A. D. C.), 335 F. 2d 288; **United States v. England** (C. A. 7), 347 F. 2d 425; **Brooks v. United States** (C. A. 5), 240 F. 2d 905.

The errors in these charges were not cured by any other charges to the jury. See **Andres v. United States**, 333 U. S. 740, 752, where it was held that, on appeal, doubt as to the meaning of an instruction to the jury in a criminal case should be resolved in favor of the accused. See also **Yates v. United States**, 354 U. S. 298, 327 and **Bollenbach v. United States**, 326 U. S. 607, 613, where it is stated "A conviction ought not to rest on an equivocal direction to the jury on a basic issue."

The Supreme Court has never approved in a reported criminal case a charge to the jury as prejudicial as the charge in this case. Many convictions have been reversed for charges that were far less prejudicial. Petitioner contends that, if the Court will consider Question 5, which has heretofore been pretermitted, and make a determination of this question, the Court cannot allow the conviction to stand and it will be reversed.



### **III. The Pretermitted Question as to the Testimony of the Judges and the Admission of Vick's Affidavit.**

Question 6 in the petition for certiorari was not answered in the Court's opinion and apparently was overlooked. Question 6 was "Whether it was prejudicial error to permit the two district judges to testify that they authorized sending Vick to petitioner equipped with a tape recorder and to receive in evidence Vick's affidavit." The Court's opinion does not show that the Court considered the fact that the judges testified before the jury or the circumstances under which the affidavit was admitted.

The two district judges testified as witnesses for the Government, supposedly in rebuttal, as the last witnesses in the case that they authorized Vick to carry a recorder concealed on his person to petitioner's office to use in recording a conversation between him and petitioner. They testified that they had read Vick's affidavit of November 8, 1963, to the effect that petitioner asked him to offer a bribe to a juror and that they authorized the recording to determine whether Vick's affidavit was true (R. 652a-660a). Judge Miller testified that this was his most serious problem since he had been on the bench and that he allowed the tape recorder to be used to either clear the petitioner or "prove that he was guilty" (659a, 660a).

Prior to the judges' testimony, and during the Government's case in chief, undisputed evidence had already been admitted that Vick's affidavit had been presented to the judges, that they authorized him to carry the concealed recording device, that the transcription of the recording had been furnished to the judges, that the transcription was correct and that petitioner had been disbarred (182a-185a, 210a-212a, 383a, 408a, 469a). The judges' testimony was clearly improper and was not in rebuttal to the defense of entrapment as claimed by the Government.

At the trial, Government counsel stated that the judges would testify in rebuttal to the defense of entrapment (651a) and then proceeded to ask the judges about their having read Vick's affidavit and having authorized him to use a concealed recording device (652a-660a). Whether or not the judges had read Vick's affidavit or had authorized the use of the recording device had absolutely nothing to do with entrapment. The Government used the judges' testimony, not for the purpose of rebutting the defense of entrapment, but for the overwhelming effect it had on the jury to have the judges testify as the last witnesses in the case that they believed petitioner was guilty and that Vick was telling the truth. In summation to the jury, Government counsel emphasized the judges' testimony about authorizing Vick to use the concealed recording to "confirm or disprove" whether Vick was telling the truth but did not contend at that time that this testimony had to do with entrapment (666a-668a, 680a).<sup>4</sup>

The issue as to entrapment was whether Vick or petitioner initiated the idea of offering a bribe to juror Elliott and this idea was concededly initiated by one or the other of them in a conversation prior to November 8 that was not recorded (200a, 201a). The Court of Appeals recognized this, **United States v. Osborn** (C. A. 6), 350 F. 2d 497, 505, and so did the Supreme Court (Op. p. 8). Neither of the judges was present when this idea was initiated nor during any of the conversations between Vick and petitioner and the testimony of the judges does not contain any competent evidence as to who originated the idea of

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<sup>4</sup> In opening argument: "—is there any other answer but as Judge Miller and Judge Gray told you on the stand, 'This was a serious matter. We had to confirm or disprove this'" (668a). In closing argument: "Will you have the courage, will you have the fortitude, will you have the interest in justice to stand on the side of justice, to stand on the side of the courts, the judges?" (680a).

approaching Elliott. The testimony of these judges was merely to the effect that it was their opinion that Vick's affidavit was true and that petitioner was guilty. The admission of this testimony would have been reversible error even if admitted during the Government's case in chief. The admission of this testimony in rebuttal is even more prejudicial. It is stated in 23 C. J. S., Criminal Law, Sec. 858 (5), pp. 387, 388:

"... it is improper to permit a witness to invade the province of the jury by stating his opinion, conclusion or belief, as for example, as to the credibility of other witnesses ... or as to the guilt or innocence of the accused, the commission of the crime, the connection of the accused with it, the existence or non-existence of a defense, or other matters directly in issue. Under this view, even an expert witness may not usurp the province of the jury as to matters of fact or express an opinion on the ultimate fact in issue, or answer the exact issue which the jury are to determine ..."

In *Simmons v. United States* (C. A. D. C.), 206 F. 2d 427, it was held to be reversible error to allow opinion evidence of police officers as to the defendant's guilt. Obviously opinion evidence of federal judges would be even more prejudicial.

During the Government's case in chief, Vick's affidavit was properly excluded (408a). However, during Judge Gray's testimony in rebuttal, the trial judge allowed the affidavit to be read to the jury (653a-655a) and Judge Gray testified that he authorized further investigation "to determine whether it was true or false" (657a). The jury was made fully aware that both Judge Gray and Judge Miller believed the affidavit was true and were of the opinion that petitioner was guilty. After the affidavit had been read to the jury, and the testimony was con-

cluded and summation by Government counsel had begun, the trial judge interrupted the argument and had Vick's affidavit passed to the jurors so they could read it (664a, 665a).

It cannot be determined from the opinion of the Honorable Supreme Court whether it considered the fact that the judges testified in rebuttal or at all, that their testimony was improper opinion evidence and not proper rebuttal testimony, or that Vick's affidavit was read to the jury during the Government's rebuttal evidence and was read by the jury even after the argument had begun. Petitioner contends that, if the Court will consider Question 6 and the judges' testimony and the admission of Vick's affidavit in rebuttal, a different result will ensue and the conviction will be reversed.

### CONCLUSION.

Aside from containing a mistake of fact and pretermittting two critical questions raised in this appeal, the opinion of the Supreme Court in this case approves for the first time practices of Government agents that are especially undesirable. It approves the invasion of privacy by the use of "hidden recording devices to record incriminating statements made by the unwary suspect to a secret federal agent" (Dissenting Op. by Mr. Justice Douglas, p. 1). It approves the use of a concealed recording device to obtain evidence merely because the use of the device was authorized by federal judges, even though they could not have issued a search warrant to obtain the evidence, Federal Rule of Criminal Procedure 41 (b), and the evidence did not even exist at the time of the judges' authorization. It approves the use as evidence of a transcript of a conversation which a secret federal agent encouraged a defendant to make into a concealed recording device.



This petition for rehearing should be granted, and the conviction of petitioner set aside and petitioner should be given a judgment of acquittal or, in the alternative, the case should be remanded for a new trial.

Respectfully submitted,

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Of Counsel:

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**Certificate.**

I, Maclin P. Davis, Jr., counsel for petitioner, Z. T. Osborn, Jr., hereby certify that the foregoing petition for rehearing is presented in good faith and not for the purpose of delay.

January 30..., 1967.

*Maclin P. Davis, Jr.*

**Certificate of Service.**

I certify that copies of the foregoing petition for rehearing have been served upon the Honorable Thurgood Marshall, Solicitor General, and the Honorable Fred M. Vinson, Jr., Assistant Attorney General, by mailing the same to them at the Department of Justice, Washington, D. C. 20530, First Class, Air Mail, postage prepaid.

This January 30, 1967.

*Maclin P. Davis, Jr.*



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# SUPREME COURT OF THE UNITED STATES

No. 29.—OCTOBER TERM, 1966.

Z. T. Osborn, Jr., Petitioner, } On Writ of Certiorari to  
v. } the United States Court  
United States. } of Appeals for the Sixth  
Circuit.

[December 12, 1966.]

MR. JUSTICE STEWART delivered the opinion of the Court.

The petitioner, a Nashville lawyer, was convicted in the United States District Court for the Middle District of Tennessee upon one count of an indictment under 18 U. S. C. § 1503, which charged him with endeavoring to bribe a member of the jury panel in a prospective federal criminal trial.<sup>1</sup> The conviction was affirmed by

<sup>1</sup> 18 U. S. C. § 1503 provides as follows:

"Whoever corruptly, or by threats or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any witness, in any court of the United States or before any United States commissioner or other committing magistrate, or any grand or petit juror, or officer in or of any court of the United States, or officer who may be serving at any examination or other proceeding before any United States commissioner or other committing magistrate, in the discharge of his duty, or injures any party or witness in his person or property on account of his attending or having attended such court or examination before such officer, commissioner, or other committing magistrate, or on account of his testifying or having testified to any matter pending therein, or injures any such grand or petit juror in his person or property on account of any verdict or indictment assented to by him, or on account of his being or having been such juror, or injures any such officer, commissioner, or other committing magistrate in his person or property on account of the performance of his official duties, or corruptly or by threats or force, or by any threatening letter or communication, influences, obstructs, or impedes, or endeavors to

the Court of Appeals, 350 F. 2d 497. We granted certiorari, 382 U. S. 1023, primarily to consider whether the conviction rests upon unconstitutionally acquired evidence, although the petitioner also presses other claims.

In late 1963, James R. Hoffa was awaiting trial upon a criminal charge in the federal court in Nashville, and the petitioner, as one of Hoffa's attorneys, was engaged in preparing for that trial. In connection with these preparations the petitioner hired a man named Robert Vick to make background investigations of the people listed on the panel from which members of the jury for the Hoffa trial were to be drawn. Vick was a member of the Nashville police department whom the petitioner had employed for similar investigative work in connection with another criminal trial of the same defendant a year earlier. What the petitioner did not know was that Vick, before applying for the job with the petitioner in 1963, had met several times with federal agents and had agreed to report to them any "illegal activities" he might observe.

The conviction which we now review was upon the charge that the petitioner "during the period from on or about November 6, 1963, up to and including November 15, 1963, . . . did unlawfully, knowingly, wilfully and corruptly endeavor to influence, obstruct and impede the due administration of justice . . ." in that he "did request, counsel and direct Robert D. Vick to contact Ralph A. Elliott, who was, and was known by the said Osborn to be, a member of the petit jury panel from which the petit jury to hear the [Hoffa] trial was scheduled to be drawn, and to offer and promise to pay the said Ralph A. Elliott \$10,000 to induce the said

influence, obstruct, or impede, the due administration of justice, shall be fined not more than \$5,000 or imprisoned not more than five years, or both."

Elliott to vote for an acquittal, if the said Elliott should be selected to sit on the petit jury in the said trial." The primary evidence against the petitioner on this charge consisted of Vick's testimony, a tape recording of a conversation between the petitioner and Vick, and admissions which the petitioner had made during the course of federal disbarment proceedings.

Vick testified that during a discussion with the petitioner at the latter's office on November 7, he mentioned that he knew some of the prospective jurors. At this, according to Vick, the petitioner "jumped up," and said, "You do? Why didn't you tell me?" The two then moved outside into the adjacent alley to continue the conversation. There, Vick testified, he told the petitioner that one of the prospective jurors, Ralph Elliott, was his cousin, and the petitioner told Vick to pay a visit to Elliott to see what arrangements could be made about the case. Vick also testified to meetings with the petitioner on November 8 and November 11, when he told the petitioner, falsely, that he had visited Elliott and found him "susceptible to money for hanging this jury," to which the petitioner responded by offering \$5,000 to Elliott if he became a member of the jury and an additional \$5,000 "when he hung the jury, but he would have to go all the way, and to assure Mr. Elliott that he would not be alone, that there would be some other jurors in there."

I.

No claim is made in this case that Vick's testimony about the petitioner's incriminating statements was inadmissible in evidence. Cf. *Hoffa v. United States*, —

<sup>2</sup> The indictment contained two other counts charging similar offenses with respect to the earlier trial of the same defendant. The Government dismissed one of these counts, and the petitioner was acquitted on the other.



U. S. —; *Lewis v. United States*, — U. S. —. What is challenged is the introduction in evidence of a tape recording of one of the conversations about which Vick testified, specifically the conversation which took place in the petitioner's office on November 11. The recording of this conversation was played for the jury, and a written transcript of it was introduced in evidence. We are asked to hold that the recording should have been excluded, either upon constitutional grounds, *Weeks v. United States*, 232 U. S. 383, or in the exercise of our supervisory power over the federal courts. *McNabb v. United States*, 318 U. S. 332.

There is no question of the accuracy of the recording. The petitioner testified that it was a "substantially correct" reproduction of what took place in his office on November 11. There can be no doubt, either, of the recording's probative relevance. It provided strong corroboration of the truth of the charge against the petitioner.<sup>3</sup> The recording was made by means of a device concealed upon Vick's person during the November 11 meeting. We thus deal here not with surreptitious surveillance of a private conversation by an outsider, cf. *Silverman v. United States*, 365 U. S. 505, but, as in *Lopez v. United States*, 373 U. S. 427, with the use by one party of a device to make an accurate record of a conversation about which that party later testified. Unless *Lopez v. United States* is to be disregarded, therefore, the petitioner cannot prevail.<sup>4</sup>

<sup>3</sup> A transcript of the recording is reproduced as an Appendix to this opinion.

<sup>4</sup> It is argued that in *Lopez* the petitioner knew that the person to whom he offered a bribe was a federal officer. But, even assuming there might otherwise be some force to this distinction, it is enough to point out that in the present case the petitioner also knew he was talking to a law enforcement officer—a member of the Nashville police department.

But we need not rest our decision here upon the broad foundation of the Court's opinion in *Lopez*, because it is evident that the circumstances under which the tape recording was obtained in this case fall within the narrower compass of the *Lopez* concurring and dissenting opinions. Accordingly, it is appropriate to set out with some precision what these circumstances were.

Immediately after his November 7 meeting with the petitioner, at which, according to Vick, the possibility of approaching the juror Elliott was first discussed, Vick reported the conversation to an agent of the United States Department of Justice. Vick was then requested to put his report in the form of a written statement under oath, which he did.<sup>5</sup> The following day this sworn

<sup>5</sup> The relevant portion of this affidavit was as follows:

"On November 7, 1963, I was in Mr. Osborn's office going over the results of my investigation. I was aware that the jury panel which I had been investigating was the panel assigned to Judge William E. Miller. Mr. Osborn and I got into a discussion of the jury panel assigned to Judge Frank Gray, Jr. This jury panel list had previously been shown to me by John Polk, an investigator for Mr. Osborn. Polk told me at that time that he was investigating the jury panel assigned to Judge Gray. At that time, I mentioned to Polk that I knew three of the people on the jury panel. In discussing the panel with Mr. Osborn, I again mentioned that I knew three of the people on the jury panel. Mr. Osborn said, 'You do? Why didn't you tell me?' I told Mr. Osborn I had told John Polk and assumed that John Polk had told him. Mr. Osborn said that Polk had not told him and suggested that we discuss the matter further. We then left Mr. Osborn's office and walked out onto the street to discuss the matter further. Mr. Osborn asked me how well I knew the three prospective jurors. I told him that I knew Mr. Ralph A. Elliott, Springfield, Tennessee, the best since he was my cousin. Mr. Osborn asked me whether I knew him well enough to talk to him about anything. I said that I thought I did. Mr. Osborn then said, 'Go contact him right away. Sit down and talk to him and get him on our side. We want him on the jury.' I told Mr. Osborn that I thought Mr. Elliott was not in very good financial position and Mr. Osborn said, 'Good, go see him right away.'"

statement was shown by government attorneys to the two judges of the Federal District Court, Chief Judge Miller and Judge Gray. After considering this affidavit, the judges agreed to authorize agents of the Federal Bureau of Investigation to conceal a recorder on Vick's person in order to determine from recordings of further conversations between Vick and the petitioner whether the statements in Vick's affidavit were true. It was this judicial authorization which ultimately led to the recording here in question.\*

The issue here, therefore, is not the permissibility of "indiscriminate use of such devices in law enforcement," but the permissibility of using such a device under the most precise and discriminate circumstances, circum-

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\* The recording device did not operate properly on the occasion of Vick's visit to the petitioner's office on November 8, and Vick made a written statement of what occurred during that meeting. The government lawyers reported these circumstances to District Judge Miller, who then authorized the use of the recorder on November 11, under the same conditions:

"I said on that second occasion the same as I did on the first occasion: that the tape recorder should be used under proper surveillance, supervision, to see that it was not faked in any way, and to take every precaution to determine that it was used in a fair manner, so that we could get at the bottom of it and determine what the truth was."

"I also share the opinion of Mr. JUSTICE BRENNAN that the fantastic advances in the field of electronic communication constitute a great danger to the privacy of the individual; that indiscriminate use of such devices in law enforcement raises grave constitutional questions under the Fourth and Fifth Amendments; and that these considerations impose a heavier responsibility on this Court in its supervision of the fairness of procedures in the federal court system. However, I do not believe that, as a result, all uses of such devices should be proscribed either as unconstitutional or as unfair law enforcement methods." *Lopez v. United States*, 373 U. S., at 441 (concurring opinion of THE CHIEF JUSTICE).

stances which fully met the "requirement of particularity" which the dissenting opinion in *Lopez* found necessary.<sup>\*</sup>

The situation which faced the two judges of the District Court when they were presented with Vick's affidavit on November 8, and the motivations which prompted their authorization of the recorder are reflected in the words of Chief Judge Miller. As he put it, "The affidavit contained information which reflected seriously upon a member of the bar of this court, who had practiced in my court ever since I have been on the bench. I decided that some action had to be taken to determine whether this information was correct or whether it was false. It was the most serious problem that I have had to deal with since I have been on the bench. I could not sweep it under the rug."

So it was that, in response to a detailed factual affidavit alleging the commission of a specific criminal offense directly and immediately affecting the administration of justice in the federal court, the judges of that court jointly authorized the use of a recording device for the narrow and particularized purpose of ascertaining the truth of the affidavit's allegations. As the district judges recognized, it was imperative to determine whether the integrity of their court was being undermined, and highly undesirable that this determination should hinge on the inconclusive outcome of a testimonial contest between the only two people in the world who knew the truth—one an informer, the other a lawyer of previous good repute. There could hardly be a clearer example of "the procedure of antecedent justification before a magistrate that is central to the Fourth

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<sup>\*</sup> 373 U. S., at 463.



Amendment' " as "a precondition of lawful electronic surveillance."\*

We hold on these facts that the use of the recording device was permissible, and consequently that the recording itself was properly admitted as evidence at the petitioner's trial.

## II.

The petitioner's defense was one of entrapment, and he renews here the contention made in his motion for acquittal at the trial that entrapment was established as a matter of law. We cannot agree.

The validity of the entrapment defense depended upon what had transpired at the meetings between the petitioner and Vick which took place before the recorded conversation of November 11. According to the petitioner, Vick initiated the idea of making a corrupt approach to Elliott on October 28, and the petitioner at first resisted the suggestion and tried to discourage Vick from carrying it out. The petitioner conceded that he ultimately acquiesced in the scheme, out of "weakness" and because he was exhausted from overwork, but said that he never seriously intended actually to carry out the plan to bribe Elliott. But Vick's version of what had happened was, as stated above, quite different, and the truth of the matter was for the jury to determine.<sup>10</sup>

\* "The requirements of the Fourth Amendment are not inflexible, or obtusely unyielding to the legitimate needs of law enforcement. It is at least clear that 'the procedure of antecedent justification before a magistrate that is central to the Fourth Amendment,' *Ohio ex rel. Eaton v. Price*, 364 U. S. 263, 272 (separate opinion); see *McDonald v. United States*, 335 U. S. 451, 455; *Abel v. United States*, 362 U. S. 217, 251-252 (dissenting opinion), could be made a precondition of lawful electronic surveillance. . . ." *Lopez v. United States*, 373 U. S., at 464 (dissenting opinion of Mr. Justice BRENNAN).

<sup>10</sup> The petitioner's trial counsel explicitly conceded that the entrapment issue was for the jury to resolve.



*Masciale v. United States*, 356 U. S. 386. Surely it was not a "trap for the unwary innocent," *Sherman v. United States*, 356 U. S. 369, 372, for Vick to tell the petitioner, truthfully, that he knew some of the members of the jury panel and that one of them was his cousin. And according to Vick he had said no more when the petitioner "jumped up," went out into the alley with him, and initiated the effort to get Elliott "on our side." At the most, Vick's statement afforded the petitioner "opportunities or facilities" for the commission of a criminal offense, and that is a far cry from entrapment. *Sherman v. United States*, *supra*, at 372; *Sorrells v. United States*, 287 U. S. 435, 441.<sup>11</sup>

<sup>11</sup> The petitioner further argues, with respect to the entrapment defense, that the jury instructions were erroneous in two respects, and that government rebuttal evidence was improperly received.

It is urged that the trial judge committed error in failing to instruct the jury that if they acquitted the petitioner under Count 2 (charging an endeavor to bribe a juror at the 1962 Hoffa trial), they must not consider any evidence under that count in determining the petitioner's guilt under Count 1. Such an instruction was not requested. Rule 30, Fed. Rules Crim. Proc. Moreover, it is settled that when the defense of entrapment is raised, evidence of prior conduct tending to show the defendant's predisposition to commit the offense charged is admissible. See *Sorrells v. United States*, 287 U. S. 435, 451.

The petitioner further argues that the instructions on entrapment erroneously left to the jury the question of whether the tape recording had been obtained by lawful means. We do not so understand the trial judge's language, and neither, apparently, did trial counsel, because no objection was made to the instructions as given. Rule 30, Fed. Rules Crim. Proc. Moreover, such an instruction would have been favorable to the petitioner, because the judge, in denying the earlier defense motion to suppress, had already ruled that the recording had been lawfully obtained.

Finally, objection is made to permitting the Government on rebuttal to introduce Vick's November 8 affidavit and show the circumstances under which the tape recording had been authorized by the

## III.

Finally, the argument is made that even if the admissibility and truth of all the evidence against the petitioner be accepted, this conviction must be set aside because his conduct did not constitute a violation of 18 U. S. C. § 1503.<sup>12</sup> The basis for this argument is that since Vick never in fact approached Elliott and never intended to do so, any endeavor on the petitioner's part was impossible of accomplishment.

We reject the argument. Whatever continuing validity the doctrine of "impossibility," with all its subtleties, may continue to have in the law of criminal attempt,<sup>13</sup> that body of law is inapplicable here. The statute under which the petitioner was convicted makes an offense of any proscribed "endeavor." And almost 50 years ago this Court pointed out the significance of that word: "The word of the section is 'endeavor,' and by using it the section got rid of the technicalities which might be urged as besetting the word 'attempt,' and it describes any effort or essay to accomplish the evil purpose that the section was enacted to prevent. . . . The section . . . is not directed at success in corrupting a juror but at the 'endeavor' to do so. Experimental approaches to the corruption of a juror are the 'endeavor' of the section." *United States v. Russell*, 255 U. S. 138, 143.

judges. But this evidence was a relevant response to the petitioner's testimony that it was Vick who, at the instigation of the Government, had initiated the plan to approach Elliott as early as October 28.

<sup>12</sup> See note 1, *supra*.

<sup>13</sup> Compare *People v. Jaffe*, 185 N. Y. 497, 78 N. E. 169, with *People v. Gardner*, 144 N. Y. 119, 38 N. E. 1003. See Wechsler, Jones and Korn, *The Treatment of Inchoate Crimes in the Model Penal Code of the American Law Institute: Attempt, Solicitation and Conspiracy*, 61 Colum. L. Rev. 571, 578-585 (1961).

If the evidence against the petitioner be accepted, there can be no question that he corruptly endeavored to impede the due administration of justice by instructing Robert Vick to offer a bribe to a prospective juror in a federal criminal case.

*Affirmed.*

MR. JUSTICE WHITE took no part in the consideration or decision of this case.

## APPENDIX.

Transcript of the recording of the Vick-Osborn conversation of November 11, 1963:

"Girl: You can go in now.

"Vick: O. K. honey. Hello, Mr. Osborn.

"Osborn: Hello, Bob, close the door, my friend, and let's see what's up.

"Vick: How're you doing?

"Osborn: No good. How're you doing?

"Vick: Oh, pretty good. You want to talk in here?

"Osborn: How far did you go?

"Vick: Well, pretty far.

"Osborn: Maybe we'd better . . .

"Vick: Whatever you say. Don't make any difference to me.

"Osborn: [Inaudible whisper.]

"Vick: I'm comfortable, but er, this chair sits good, but we'll take off if you want to, but

"Osborn: Did you talk to him?

"Vick: Huh?

"Osborn: Did you talk to him?

"Vick: Yeah. I went down to Springfield Saturday morning and talked to er.

"Osborn: Elliott?

"Vick: Elliott.

"Osborn: [Inaudible whisper.]

"Vick: Huh?

"Osborn: Is there any chance in the world that he would report you?

"Vick: That he will report me to the FBI? Why of course, there's always a chance, but I wouldn't get into it if I thought it was very, very great.

"Osborn: [Laughed.]

"Vick: You understand that.



"Osborn: [Laughing.] Yeah, I do know. Old Bob first.

"Vick: That's right. Don't worry. I'm gonna take care of old Bob and I know, and of course I'm depending on you to take care of old Bob if anything, if anything goes wrong.

"Osborn: I am. I am. Why certainly.

"Vick: Er, we had coffee Saturday morning and now he had previously told you that it's the son.

"Osborn: It is?

"Vick: Yes, and not the father.

"Osborn: That's right.

"Vick: The son is Ralph Alden Elliott and the father is Ralph Donnal. Alden is er—Marie, that's Ralph's wife who killed herself. That was her maiden name, Alden, see? Anyway, we had coffee and he's been on a hung jury up here this week, see?

"Osborn: I know that.

"Vick: Well, I didn't know that but anyway, he brought that up so he got to talking about the last Hoffa case being hung, you know, and some guy refusing \$10,000 to hang it, see, and he said the guy was crazy, he should've took it, you know, and so we talked about and so just discreetly, you know, and course I'm really playing this thing slow, that's the reason I asked you if you wanted a lawyer down there to handle it or you wanted me to handle it, cause I'm gonna play it easy.

"Osborn: The less people the better.

"Vick: That's right. Well, I'm gonna play it slow and easy myself and er, anyway, we talked about er, something about five thousand now and five thousand later, see, so he did, he brought up five thousand see, and talking about about [sic] how they pay it off you know and things like that. I don't know whether he suspected why I was there or not cause I don't just drop out of the blue to visit him socially, you know. We're



friends, close kin, cousins, but I don't ordinarily just, we don't fraternize, you know, and er, so he seemed very receptive for er, to hang the thing for five now and five later. Now, er, I thought I would report back to you and see what you say.

"Osborn: That's fine! The thing to do is set it up for a point later so you won't be running back and forth.

"Vick: Yeah.

"Osborn: Tell him it's a deal.

"Vick: It's what?

"Osborn: That it's a deal. What we'll have to do when it gets down to the trial date, when we know the date, tomorrow for example if the Supreme Court rules against us, well, within a week we'll know when the trial comes. Then he has to be certain that when he gets on, he's got to know that he'll just be talking to you and nobody else.

"Vick: Social strictly.

"Osborn: Oh yeah.

"Vick: I've got my story all fixed on that.

"Osborn: Then he will have to know where to, he will have to know where to come.

"Vick: Well, er . . .

"Osborn: And he'll have to know when.

"Vick: Er, do you want to use him yourself? You want me to handle it or what?

"Osborn: Uh huh. You're gonna handle it yourself.

"Vick: All right. You want to know it when he's ready, when I think he's ready for the five thousand. Is that right?

"Osborn: Well no, when he gets on the panel, once he gets on the jury. Provided he gets on the panel.

"Vick: Yeah. Oh yeah. That's right. That's right. Well now, he's on the number one.

"Osborn: I know, but now . . .

"Vick: But you don't know that would be the one.

"Osborn: Well, I know this, that if we go to trial before that jury he'll be on it but suppose the government challenges him over being on another hung jury.

"Vick: Oh, I see.

"Osborn: Where are we then?

"Vick: Oh I see. I see.

"Osborn: So we have to be certain that he makes it on the jury.

"Vick: Well now, here's one thing, Tommy. He's a member of the CWA, see, and the Teamsters, or

"Osborn: Well, they'll knock him off.

"Vick: Naw, they won't. They've had a fight with CWA, see?

"Osborn: I think everything looks perfect.

"Vick: I think it's in our favor, see. I think that'll work to our favor.

"Osborn: That's why I'm so anxious that they accept him.

"Vick: I think they would, too. I don't think they would have a reason in the world to. I don't think that I'm under any surveillance or suspicion or anything like that.

"Osborn: I don't think so.

"Vick: I don't know. I don't frankly think, since last year and since I told them I was through with the thing, I don't think I have been. Now, Fred,

"Osborn: I don't think you have either.

"Vick: You know Fred and I may not [pause] he may be too suspicious and I may not be suspicious enough. I don't know.

"Osborn: I think you've got it sized up exactly right.

"Vick: Well, I think so.

"Osborn: Now, you know you promised that fella that you would have nothing more to do with that case.

"Vick: That's right.

"Osborn: At that time you had already checked on some of the jury that went into Miller's court. You went ahead and did that.

"Vick: Well, here's another thing, Tommy.

"Osborn: . . . church affiliations, background, occupation and that sort of thing on those that went into Miller's court. You didn't even touch them. You didn't even investigate the people that were in Judge Gray's court.

"Vick: Well, here's the thing about it, Tommy. Soon as this damn thing's over, they're gonna kick my — out anyway, so probably Fred's too. So I might as well get out of it what I can. The way I look at it. I might be wrong, cause the Tennessean is not gonna have anything to do with anybody that's had anything to do with the case now or in the past, you know that. Cause they're too close to the Kennedys.

"Osborn: All right, so we'll leave it to you. The only thing to do would be to tell him, in other words your next contact with him would be to tell him if he wants that deal, he's got it.

"Vick: O. K.

"Osborn: The only thing it depends upon is him being accepted on the jury. If the government challenges him there will be no deal.

"Vick: All right. If he is seated.

"Osborn: If he's seated.

"Vick: He can expect five thousand then and

"Osborn: Immediately.

"Vick: Immediately and then five thousand when it's hung. Is that right?

"Osborn: All the way, now!

"Vick: Oh, he's got to stay all the way?

"Osborn: All the way.

"Vick: No swing. You don't want him to swing like we discussed once before. You want him

"Osborn: Of course, he could be guided by his own b——, but that always leaves a question. The thing to do is just stick with his crowd. That way we'll look better and maybe they'll have to go to another trial if we get a pretty good count.

"Vick: Oh. Now, I'm going to play it just like you told me previously, to reassure him and keep him from getting panicky, you know. I have reason to believe that he won't be alone, you know.

"Osborn: You assure him of that. 100%.

"Vick: And to keep any fears down that he might have, see?

"Osborn: Tell him there will be at least two others with him.

"Vick: Now, another thing, I want to ask you does John know anything. You know, I originally told John about me knowing.

"Osborn: He does not know one thing.

"Vick: He doesn't know. O. K.

"Osborn: He'll come in and recommend this man—and I'll say well just let it alone, you know.

"Vick: Yeah. So he doesn't know anything about this at all?

"Osborn: Nothing.

"Vick: Now he hasn't seen me. When I first came here he was in here, see.

"Osborn: —We'll keep it secret. The way to keep it safe is that nobody knows about it but you and me—Where could they ever go?

"Vick: Well, that's it, I reckon, or I'll probably go down there. See, I'm off tonight. I'm off Sunday and Monday, see. That's why I talked to you yesterday. I had a notion to go down there yesterday cause I was off last night and I'm off again tonight.

"Osborn: It will be a week at least until we know the trial date.

"Vick: O. K. You want to hold up doing anything further till we know.

"Osborn: Unless he should happen to give you a call and—something like that, then you just tell him, whenever you happen to run into him.

"Vick: Well, he's not apt to call, cause see

"Osborn: You were very circumspect.

"Vick: Yeah. We haven't talked really definite and I think he clearly understands. Now, he might, it seemed to me that maybe he thought I was joking or, you know.

"Osborn: That's a good way to leave it, he's the one that brought it up.

"Vick: That's right.

"Osborn: —

"Vick: Well, I knew he would before I went down there.

"Osborn: Well, —

"Vick: Huh?

"Osborn: I'll be talking to you.

"Vick: I'll wait a day or two.

"Osborn: Yeah, I would.

"Vick: Before I contact him. Don't want to seem anxious and er

"Osborn: —

"Vick: O. K. See you later."



# SUPREME COURT OF THE UNITED STATES

Nos. 29, 32, AND 36.—OCTOBER TERM, 1966.

Z. T. Osborn, Jr., Petitioner,  
29 v.

United States.

James R. Hoffa, Petitioner,  
32 v.

United States.

On Writs of Certiorari to  
the United States Court  
of Appeals for the Sixth  
Circuit.

Duke Lee Lewis, Petitioner,  
36 v.

United States.

On Writ of Certiorari to  
the United States Court  
of Appeals for the First  
Circuit.

[December 12, 1966.]

MR. JUSTICE DOUGLAS, dissenting in *Osborn v. United States* and *Lewis v. United States*; concurring with MR. JUSTICE CLARK in *Hoffa v. United States*.

These cases present important questions of federal law concerning the privacy of our citizens and the breach of that privacy by government agents. *Lewis v. United States* involves the breach of the privacy of the home by government agents posing in a different role for the purpose of obtaining evidence from the homeowner to convict him of a crime. *Hoffa v. United States* raises the question whether the Government in that case induced a friend of Hoffa's to insinuate himself into Hoffa's entourage, there to serve as the Government's eyes and ears for the purpose of obtaining incriminating evidence. *Osborn v. United States* presents the question whether the Government may compound the invasion of privacy by using hidden recording devices to record incriminating statements made by the unwary suspect to a secret federal agent.

These federal cases present various aspects of the constitutional right of privacy. Privacy, though not expressly mentioned in the Constitution, is essential to the exercise of other rights guaranteed by it. As we recently said in *Griswold v. Connecticut*, 381 U. S. 479, 484:

"(S)pecific guarantees in the Bill of Rights have penumbras, formed by emanations from those guarantees that help give them life and substance. . . . Various guarantees create zones of privacy. The right of association contained in the penumbra of the First Amendment is one. . . . The Third Amendment in its prohibition against the quartering of soldiers 'in any house' in time of peace without the consent of the owner is another facet of that privacy. The Fourth Amendment explicitly affirms the 'right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.' The Fifth Amendment in its Self-Incrimination Clause enables the citizen to create a zone of privacy which government may not force him to surrender to his detriment. The Ninth Amendment provides: 'The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.'"

We are rapidly entering the age of no privacy, where everyone is open to surveillance at all times; where there are no secrets from government. The aggressive breaches of privacy by the Government increase with geometric proportion. Wire tapping and "bugging" run rampant, without effective judicial or legislative control.

Secret observation booths in government offices and closed television circuits in industry, extending even to rest rooms, are common.<sup>1</sup> Offices, conference rooms,

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<sup>1</sup> See generally, Hearings before the Subcommittee on Administrative Practice and Procedure of the Senate Committee on the Judiciary, *Invasions of Privacy*, 89th Cong., 1st Sess. (1965).

hotel rooms, and even bedrooms (see *Irvine v. California*, 347 U. S. 128) are "bugged" for the convenience of government. Peepholes in men's rooms are there to catch homosexuals. See *Smayada v. United States*, 352 F. 2d 251. Personality tests seek to ferret out a man's innermost thoughts on family life, religion, racial attitudes, national origin, politics, atheism, ideology, sex, and the like.<sup>2</sup> Federal agents are often "wired" so that their conversations are either recorded on their person (*Lopez v. United States*, 373 U. S. 427) or transmitted to tape recorders some blocks away.<sup>3</sup> The Food and Drug Administration recently put a spy in a church organization.<sup>4</sup> Revenue agents have gone in the disguise of Coast Guard officers.<sup>5</sup> They have broken and entered homes to obtain evidence.<sup>6</sup>

Polygraph tests of government employees and of employees in industry are rampant.<sup>7</sup> The dossiers on all citizens mount in number and increase in size. Now they are being put on computers so that by pressing one button all the miserable, the sick, the suspect, the unpopular, the off-beat people of the Nation can be instantly identified.<sup>8</sup>

<sup>2</sup> See generally, Hearings before a Subcommittee of the House Committee on Government Operations, Special Inquiry on Invasion of Privacy, 89th Cong., 1st Sess. (1965); Hearings before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary, Psychological Tests and Constitutional Rights, 89th Cong., 1st Sess. (1965).

<sup>3</sup> See, e. g., Hearings before the Subcommittee of Administrative Practice and Procedure, *supra*, note 1, pt. 2, at 389.

<sup>4</sup> *Id.*, at 783.

<sup>5</sup> *Id.*, pt. 3, at 1356.

<sup>6</sup> *Id.*, at 1379, 1415.

<sup>7</sup> See generally, Hearings before a Subcommittee of the House Committee on Government Operations, Use of Polygraphs As "Lie Detectors" By the Federal Government, 88th Cong., 2d Sess. (1964).

<sup>8</sup> See generally, Hearings before a Subcommittee of the House Committee on Government Operations, The Computer and Invasion of Privacy, 89th Cong., 2d Sess., July 26, 27, and 28, 1966.

These examples and many others demonstrate an alarming trend whereby the privacy and dignity of our citizens is being whittled away by sometimes imperceptible steps. Taken individually each step may be of little consequence. But when viewed as a whole, there begins to emerge a society quite unlike any we have seen—a society in which government may intrude into the secret regions of man's life at will.

We have here in the District of Columbia squads of officers who work the men's rooms in public buildings trying to get homosexuals to solicit them. See *Beard v. Stahr*, 200 F. Supp. 766, 768, judgment vacated, 370 U. S. 41. Undercover agents or "special employees" of narcotics divisions of city, state, and federal police actively solicit sales of narcotics. See generally, 31 U. Chi. L. Rev. 137, 74 Yale L. J. 942. Police are instructed to pander to the weaknesses and craven motives of friends and acquaintances of suspects, in order to induce them to inform. See generally, Harney & Cross, *The Informer in Law Enforcement* 33-44 (1960). In many cases the crime has not yet been committed. The undercover agent may enter a suspect's home and make a search upon mere suspicion that a crime will be committed. He is indeed often the instigator of, and active participant in the crime—an *agent provocateur*. Of course, when the solicitation by the concealed government agent goes so far as to amount to entrapment, the prosecution fails. *Sorrells v. United States*, 287 U. S. 435; *Sherman v. United States*, 356 U. S. 369. But the "dirty business" (*Olmstead v. United States*, 277 U. S. 438, 470 (Mr. Justice Holmes dissenting)) does not begin or end with entrapment. Entrapment is merely a facet of a much broader problem. Together with illegal searches and seizures, coerced confessions, wiretapping, and bugging, it repre-



sents lawless invasion of privacy. It is indicative of a philosophy that the means justify the ends.\*

We are here concerned with the manner in which government agents enter private homes. In *Lewis* the undercover agent appeared as a prospective client. Tomorrow he may be a policeman disguised as the grocery deliveryman or telephone repairman, or even a health inspector.<sup>10</sup> Cf. *Frank v. Maryland*, 359 U. S. 360; *Eaton v. Price*, 364 U. S. 263.

We said in *Gouled v. United States*, 255 U. S. 298, 306:

"[W]hether entrance to the home or office of a person suspected of a crime be obtained by a representative of any branch or subdivision of the Government of the United States by stealth, or through

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\* We know from the Hearings before Senate and House Committees that the Government is using such tactics on a gargantuan scale and has become callous of the rights of the citizens.

The attitude that those investigated for crime have fewer constitutional rights than others has currency:

"Senator LONG. I am curious as to whether you have a different set of principles, different standards, a different view as to the constitutional rights and privileges where the OCD is involved and where the ordinary taxpayer is involved?

"Mr. WILSON. It is pretty much a matter of fight fire with fire. Yes, I think to a degree here is a different feeling when you are working on organized crime.

"Senator LONG. In other words, you say one has constitutional rights and the other one does not?

"Mr. WILSON. No, we don't say that.

"Senator LONG. You act like it, though, don't you?

"Mr. WILSON. I am afraid you are right."

Hearings before the Subcommittee on Administrative Practice and Procedure of the Senate Committee on the Judiciary, *Invasions of Privacy*, pt. 3, at 1477 (1965).

<sup>10</sup> We are told that raids by welfare inspectors to see if recipients of welfare have violated eligibility requirements flout the Fourth Amendment. See Reich, *Midnight Welfare Searches and the Social Security Act*, 72 Yale L. J. 1347 (1963).



social acquaintance, or in the guise of a business call, and whether the owner be present or not when he enters, any search and seizure subsequently and secretly made in his absence, falls within the scope of the prohibition of the Fourth Amendment . . . ."

Entering another's home in disguise to obtain evidence is a "search" that should bring into play all the protective features of the Fourth Amendment. When the agent in *Lewis* had reason for believing that petitioner possessed narcotics, a search warrant should have been obtained.<sup>11</sup>

<sup>11</sup> In *Lewis*, a federal narcotics agent, posing as an operator of a bar and grill, went to petitioner's home for the purpose of obtaining narcotics from him. He had no search warrant, though there were grounds for obtaining one. Agent Cass testified that he had been assigned to investigate narcotics activities in the Boston area in June 1963. He became acquainted with one Gold, a friend of petitioner,\* from whom he learned that one might obtain marihuana from the petitioner. It was then that Agent Cass, representing himself as "Jimmy the Pollack" telephoned the petitioner stating "a friend of ours told me you have some pretty good grass [marihuana]." Petitioner replied, "Yes, he told me about you, Pollack . . . I believe, Jimmy, I can take care of you." When Cass told him that he needed five bags, petitioner gave him his address and directions, and told him to come right over. On the basis of our prior decisions this information would certainly have made a sufficient showing of probable cause to justify the issuance of a warrant. Yet none was sought or obtained.

\* "[w]hen we approach the narcotic trafficker to purchase drugs for evidence, our credentials needs to be good—almost impeccable. Usually considered as good credentials is an introduction by an accepted criminal who vouches for our agent. In this category the informer can supply the entree which otherwise might never be attained. Working under cover, we have sometime been embarrassed by the informer's fulsome description of our rogue qualifications." Harney & Cross, *The Informer in Law Enforcement* 18-19 (1960). See Pritt, *Spies and Informers* (1958).

Almost every home is at times used for purposes other than eating, sleeping, and social activities. Is the sanctity of the home and its privacy stripped away whenever it is used for business? If so, what about the "mom and pop" grocery store with living quarters in the rear? What about garment workers who do piece work at home? What about saddle makers and shoemakers who have their shops in their homes? Are those proprietors stripped of privacy because customers come into the living quarters on business matters? What about the insurance agent who works out of his home? Is the privacy of his home shattered because he sells insurance there? And the candidate who holds political conferences in his home? Or the householder who consults with his attorney or accountant in his home? Are their homes transformed into public places which the Government may enter at will merely because they are occasionally used for business? I think not. A home is still a sanctuary, however the owner may use it. There is no reason why an owner's Fourth Amendment rights cannot include the right to open up his house to limited classes of people. And, when a homeowner invites a friend or business acquaintance into his home, he opens his house to a friend or acquaintance, not a government spy.

This does not mean he can make his sanctuary invasion-proof against government agents. The Constitution has provided a way whereby the home can lawfully be invaded, and that is with a search warrant. Where, as here, there is enough evidence to get a warrant to make a search I would not allow the Fourth Amendment to be short-circuited.

We downgrade the Fourth Amendment when we forgive noncompliance with its mandate and allow these easier methods of the police to thrive.

A householder who admits a government agent, knowing that he is such, waives of course any right of privacy. One who invites or admits an old "friend" takes, I think, the risk that the "friend" will tattle and disclose confidences or that the Government will wheedle them out of him. The case for me, however, is different when government plays an ignoble role of "planting" an agent in one's living room or uses fraud and deception in getting him there. These practices are at war with the constitutional standards of privacy which are parts of our choicest tradition.

The formula approved today by the Court in *Hoffa v. United States*, ante, p. —, makes it possible for the Government to use willy-nilly, son against father, cousin against uncle, friend against friend, to undermine the sanctity of the most private and confidential of all conversations. The Court takes the position that whether or not the Government "placed" Partin in Hoffa's councils is immaterial. The question of whether the Government planted Partin or whether Hoffa was merely the victim of misplaced confidence is dismissed as a "verbal controversy . . . unnecessary to a decision of the constitutional issues." *Hoffa v. United States*, ante, p. —. But, very real differences underlie the "verbal controversy." As I have said, a person may take the risk that a friend will turn on him and report to the police. But that is far different from the Government's "planting" a friend in a person's entourage so that he can secure incriminating evidence. In the one case, the Government has merely been the willing recipient of information supplied by a fickle friend. In the other, the Government has actively encouraged and participated in a breach of privacy by sending in an undercover agent. If *Gouled* is to be followed, then the Government unlawfully enters a man's home when its agent crawls through a window, breaks down a door, enters surreptitiously, or,

as alleged here, gets in by trickery and fraud. I therefore do not join in the *Hoffa* opinion.

I agree with MR. JUSTICE CLARK that the petition in that case should be dismissed as improvidently granted. The two lower courts found that Partin was not planted by the Federal Government in Hoffa's entourage. And I cannot say that those findings are clearly erroneous.

The trial court found: "I would further find that the Government did not place this witness Mr. Partin in the defendants' midst or have anything to do with placing him in their midst, rather that he was knowingly and voluntarily placed in their midst by one of the defendants." The Court of Appeals held that this finding was supported by substantial evidence and not clearly erroneous. 349 F. 2d 20, 36. "A court of law, such as this Court is, rather than a court for correction of error in factfinding, cannot undertake to review concurrent findings of fact by two courts below in the absence of a very obvious and exceptional showing of error." *Graver Mfg. Co. v. Linde Co.*, 336 U. S. 271, 275. At times there are questions of law that may undercut two concurrent findings of fact.<sup>12</sup> See *Graver Mfg. Co. v. Linde Co.*, *supra*, at 280 (dissent); *Gonzales v. United States*, 364 U. S. 59, 66 (dissent); *Blau v. Lehman*, 368 U. S. 403, 408-409. But I see no such difficulty here.

It is true that in cases from state courts involving federal constitutional rights we are careful to review findings of fact lest a state rule undercut the federal claim. *Norris v. Alabama*, 294 U. S. 587, 590; *Hooven & Allison Co. v. Evatt*, 324 U. S. 652, 659; *Watts v. Indiana*, 338

<sup>12</sup> Cf. the cases from state courts dealing with the question whether a confession has been coerced contrary to the requirements of the Fourteenth Amendment, where the Court weighs only the undisputed facts. *Ashcraft v. Tennessee*, 322 U. S. 143, 153, 154; *Malinski v. New York*, 324 U. S. 401, 404; *Thomas v. Arizona*, 356 U. S. 390, 402-403; *Rogers v. Richmond*, 365 U. S. 534, 546.



U. S. 49, 51; *Napue v. Illinois*, 360 U. S. 264, 271; *Haynes v. Washington*, 373 U. S. 503, 515-516; *Jacobellis v. Ohio*, 378 U. S. 184, 187-188. In those cases a question of fact and a question of law are usually intertwined, e. g., is a confession "voluntary," is a book "obscene" and the like. Here the question for the factfinders was whether Partin was "planted" on petitioner or whether petitioner was the victim of misplaced confidence. This is not a case where "a conclusion" is "drawn from uncontroverted happenings, when that conclusion incorporates standards of conduct or criteria for judgment which in themselves are decisive of constitutional rights." *Watts v. Indiana*, *supra*, at 51. I would apply the same legal criteria as THE CHIEF JUSTICE, once the facts are found. If we were the original factfinders the question would not be an open and shut one for me. But the concurrent findings by the lower courts have support in the evidence and I would let them stand.

Once electronic surveillance, approved in *Lopez v. United States*, 373 U. S. 427, is added to the techniques of snooping which this sophisticated age has developed, we face the stark reality that the walls of privacy have broken down and all the tools of the police state are handed over to our bureaucracy on a constitutional platter. The Court today pays lip service to this danger in *Osborn v. United States*, *ante*, p. —, but goes on to approve what was done in the case for another reason. In *Osborn v. United States*, use of the electronic device to record the fateful conversation was approved by the two judges of the District Court in advance of its use.<sup>13</sup>

<sup>13</sup> The recent regulation of the Federal Communications Commission that bans the use of monitoring devices "unless such use is authorized by all the parties engaging in the conversations" (31 Fed. Reg. 3400) is of course applicable only when air waves are used; and it does not apply to "operations of any law enforcement officers conducted under lawful authority." *Ibid.* If *Silverman v. United*



But what the Court overlooks is that the Fourth Amendment does not authorize warrants to issue for *any* search even on a showing of probable cause. The first clause of the Fourth Amendment reads:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, . . . ."

As held in *Boyd v. United States*, 116 U. S. 616, a validly executed warrant does not necessarily make legal the ensuing search and seizure.

"It is not the breaking of his doors, and the rummaging of his drawers, that constitutes the essence of the offence; but it is the invasion of his infeasible right of personal security, personal liberty

*States*, 365 U. S. 505, is read in the context of our prior decisions, then the majority view is that the use of an electronic device to record a conversation in the home is not a "search" within the meaning of the Fourth Amendment, unless the device itself penetrates the wall of the home. Section 605 of the Federal Communications Act, 48 Stat. 1103, 47 U. S. C. § 605, that governs the interception of communications made "by wire or radio" reaches only the problem of the persons to whom the message may be disclosed by federal agents as well as others (*Nardone v. United States*, 302 U. S. 329, 308 U. S. 338), not the practice itself.

Though § 605 protects communications "by wire or radio," the Court in *On Lee v. United States*, 343 U. S. 747, 754, held that § 605 was not violated when a narcotics agent wearing an electronic device entered the combination home and office of a suspect and engaged him in conversation which was broadcast to another agent stationed outside. "Petitioner [the suspect] had no wires and no wireless. There was no interference with any communications facility which he possessed or was entitled to use. He was not sending messages to anybody or using a system of communications within the Act."

If that decision stands, then § 605 extends no protection to messages intercepted by the use of electronic devices banned by the new 1966 Federal Communications Commission rule.

and private property, where that right has never been forfeited by his conviction of some public offence—it is the invasion of this sacred right which underlies and constitutes the essence of Lord Camden's judgment. [*Entick v. Carrington*, 19 How. St. Tr. 1029.] Breaking into a house and opening boxes and drawers are circumstances of aggravation; but any forcible and compulsory extortion of a man's own testimony or of his private papers to be used as evidence to convict him of crime or to forfeit his goods, is within the condemnation of that judgment. In this regard the Fourth and Fifth Amendments run almost into each other." *Id.*, at 630.

It was accordingly held in *Gouled v. United States*, *supra*, at 309, that a search warrant "may not be used as a means of gaining access to a man's house or office and papers solely for the purpose of making search to secure evidence to be used against him in a criminal or penal proceeding" but only to obtain contraband articles or the tools with which a crime had been committed. That decision was by a unanimous Court in 1921, the opinion being written by Mr. Justice Clarke. That view has been followed (*United States v. Lefkowitz*, 285 U. S. 252, 465; *Harris v. United States*, 331 U. S. 145, 154; *United States v. Rabinowitz*, 339 U. S. 56, 64) with the result that today a "search" that respects all the procedural proprieties of the Fourth Amendment is none-the less unconstitutional if it is a "search" for testimonial evidence.

As already indicated, *Boyd v. United States*, *supra*, made clear that if the barriers erected by the Fourth Amendment were not strictly honored, serious invasions of the Fifth Amendment might result. Encouraging a person to talk into a concealed "bug" may not be compulsion within the meaning of the Fifth Amendment. But allowing the transcript to be used as evidence against

the accused is using the force and power of the law to make a man talk against his will, just as is the use of a warrant to obtain a letter from the accused's home and allowing it as evidence. "Illegitimate and unconstitutional practices get their first footing . . . by silent approaches and slight deviations from legal modes of procedure." 116 U. S., at 635. The fact that the officer could have testified to his talk with Osborn is no answer. Then an issue of credibility between two witnesses would be raised. But the tape recording carrying the two voices is testimony introduced by compulsion and, subject to the defense that the tape was "rigged,"<sup>14</sup> is well nigh conclusive proof.

I would adhere to *Gouled* and bar the use of all testimonial evidence obtained by wiretapping or by an electronic device. The dangers posed by wiretapping and electronic surveillance strike at the very heart of the democratic philosophy. A free society is based on the premise that there are large zones of privacy into which the Government may not intrude except in unusual circumstances. As we noted in *Griswold v. Connecticut*, *supra*, various provisions of the Bill of Rights contain this aura of privacy, including the First, Third, Fourth, Fifth, and the Ninth.<sup>15</sup> As respects the Fourth, this

<sup>14</sup> Rigging is easy for the expert. See Dash, *The Eavesdroppers* 367-371 (1959): "... the tape to be edited is played on a machine which can be instantaneously stopped at will. When a word or passage occurs which is to be deleted, the machine is stopped, the piece of tape containing the unwanted section is cut out, and the two loose ends are spliced. The words cut out can be inserted in whole or in part somewhere else. Sentences can be rearranged. New words can be dubbed in by an impersonator or made up of sounds taken from other words." *Id.*, 369.

"... a skilfully edited tape cannot be detected with equipment readily available." *Id.*, 371.

<sup>15</sup> "The ninth amendment should be permitted to occupy its rightful place in the Constitution as a reminder at the end of the Bill

premise is expressed in the provision that the Government can intrude upon a citizen's privacy only pursuant to a search warrant, based upon probable cause, and specifically describing the objects sought. And, the "objects" of the search must be either instrumentalities or proceeds of the crime. But wiretapping and electronic "bugging" invariably involve a search for mere evidence. The objects to be "seized" cannot be particularly described; all the suspect's conversations are intercepted. The search is not confined to a particular time, but may go on for weeks or months. The citizen is completely unaware of the invasion of his privacy. The invasion of privacy is not limited to him, but extends to his friends and acquaintances—to anyone who happens to talk on the telephone with the suspect or who happens to come within the range of the electronic device. Their words are also intercepted; their privacy is also shattered. Such devices lay down a dragnet which indiscriminately sweeps in all conversations within its scope, without regard to the nature of the conversations, or the participants. A warrant authorizing such devices is no different than the general warrants the Fourth Amendment was intended to prohibit.

Such practices can only have a damaging effect on our society. Once sanctioned, there is every indication that their use will indiscriminately spread. The time may come when no one can be sure whether his words are being recorded for use at some future time; when every-

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of Rights that there exist rights other than those set out in the first eight amendments. It was intended to preserve the underlying theory of the Constitutional Convention that individual rights exist independently of government, and to negate the Federalist argument that the enumeration of certain rights would imply the forfeiture of all others. The ninth is simply a rule of construction, applicable to the entire constitution." Note, *The Uncertain Renaissance of the Ninth Amendment*, 33 U. Chi. L. Rev. 814, 835 (1966).

one will fear that his most secret thoughts are no longer his own, but belong to the Government; when the most confidential and intimate conversations are always open to eager, prying ears. When that time comes, privacy, and with it liberty, will be gone. If a man's privacy can be invaded at will, who can say he is free? If his every word is taken down and evaluated, or if he is afraid they may be, who can say he enjoys freedom of speech? If his every association is known and recorded, if the conversations with his associates are purloined, who can say he enjoys freedom of association? When such conditions obtain, our citizens will be afraid to utter any but the safest and most orthodox thoughts; afraid to associate with any but the most acceptable people. Freedom as the Constitution envisages it will have vanished.

I would reverse *Lewis* and *Osborn* and dismiss *Hoffa*.